

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE
4
5
6 RICHARD BOEKEN,)
7)
8 PLAINTIFF,)
9)
10 VS.) CASE NO.
11) BC226593
12 PHILIP MORRIS,)
13)
14 DEFENDANT.)
15 _____)
16)
17 REPORTER'S TRANSCRIPT OF PROCEEDINGS
18 THURSDAY, APRIL 26, 2001
19
20
21
22 VOLUME 24-B.
23 PAGES 3871 THROUGH 3956.
24
25
26 LISA RIDLEY, CSR NO. 5886
27 CARMEN J. GARROD, CSR NO. 4009, RPR
28 OFFICIAL COURT REPORTERS
1 APPEARANCES:
2
3 FOR THE PLAINTIFF: LAW OFFICES OF MICHAEL J. PIUZE
4 BY: MICHAEL J. PIUZE,
5 ATTORNEY AT LAW
6 11755 WILSHIRE BOULEVARD
7 SUITE 1170
8 LOS ANGELES, CALIFORNIA 90025
9 (310) 312-1102
10
11 FOR THE DEFENDANT: ARNOLD & PORTER
12 BY: MAURICE LEITER,
13 JOHN CARLTON,
14 AND ADAM LE BERTHON,
15 ATTORNEYS AT LAW
16 777 SOUTH FIGUEROA STREET
17 FORTY-FOURTH FLOOR
18 LOS ANGELES, CALIFORNIA 90017
19 (213) 243-4110
20
21
22 ALSO PRESENT: MR. GOLDSTEIN
23
24
25
26
27
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1 CHRONOLOGICAL INDEX
2
3 FOR THE DATE OF APRIL 26, 2001
4
5 VOLUME 24 B OF _____
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8 PLAINTIFF'S WITNESSES PAGE/VOLUME
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10
11 HOFFMAN, ELIZABETH COBBS
12
13 DIRECT EXAMINATION (CONT'D) BY MR. LEITER 3871
14 CROSS-EXAMINATION BY MR. PIUZE 3905
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1 EXHIBITS
2
3 FOR THE DATE OF APRIL 26, 2001
4
5 VOLUME 24 B
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7
8 EXHIBITS MARKED FOR IDENTIFICATION PAGE/VOLUME
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11 (NO EXHIBITS WERE OFFERED.)
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1 CASE NUMBER: BC226593
2 CASE NAME: BOEKEN VS. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA THURSDAY, APRIL 26, 2001
4 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE
5 REPORTER: CARMEN J. GARROD, CSR NO. 4009
6 TIME: 1:39 P.M.
7 (APPEARANCES AS HERETOFORE NOTED.)
8

9 THE COURT: OUR JURY PANEL IS WITH US. COUNSEL ARE
10 PRESENT. THE WITNESS IS ON THE STAND.

11 MA'AM, YOU UNDERSTAND YOU'RE STILL UNDER OATH?

12 THE WITNESS: YES, I DO.

13

14 ELIZABETH COBBS HOFFMAN

15 CALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN
16 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER
17 AS FOLLOWS:

18 THE COURT: MR. LEITER.

19 MR. LEITER: THANK YOU, YOUR HONOR.

20

21 DIRECT EXAMINATION (CONTINUED)

22 BY MR. LEITER:

23 Q. GOOD AFTERNOON, DR. HOFFMAN.

24 A. GOOD AFTERNOON.

25 Q. BEFORE THE BREAK WE WERE TALKING ABOUT THE
26 PERIOD 1964 TO 1980, REMEMBER, AND WE WERE TALKING ABOUT
27 INFORMATION AVAILABLE AFTER THE '64 SURGEON GENERAL'S
28 REPORT ABOUT THE EFFECTS OF SMOKING, ABOUT THE GENERAL
3872

1 SOURCES.

2 WHAT I'D LIKE TO DO -- STILL IN 1964 TO '80
3 PERIOD -- IS TO TALK A LITTLE MORE ABOUT ORGANIZATIONS THAT
4 WERE ASSISTING PEOPLE IN QUITTING SMOKING.
5 YOU MENTIONED THAT BRIEFLY. COULD YOU EXPLAIN
6 TO THE JURY A LITTLE BIT MORE ABOUT THE KINDS OF
7 ORGANIZATIONS THERE WERE DURING THIS PERIOD, AND THE KIND
8 OF WORK THAT THEY DID?

9 A. WELL, THERE WERE BOTH COMMERCIAL AND NONPROFIT
10 AND GOVERNMENTAL ORGANIZATIONS THAT WERE TRYING TO HELP
11 PEOPLE STOP SMOKING. AT THE GOVERNMENTAL LEVEL THERE IS --
12 AS I MENTIONED, THERE WAS A PUBLIC HEALTH DEPARTMENT
13 PROGRAM, LIKE HERE THAT LOS ANGELES STARTED, FREE CLINICS
14 FOR PEOPLE.
15 THERE WERE ALSO PROGRAMS SPONSORED BY GROUPS
16 LIKE THE AMERICAN CANCER SOCIETY AND THE SEVENTH DAY
17 ADVENTISTS, THAT WERE DESIGNED TO DO THIS -- TO GIVE YOU AN
18 EXAMPLE OF SOMETHING WHICH I'LL PROBABLY GET A LITTLE
19 CHANCE TO TALK MORE ABOUT LATER -- THE AMERICAN CANCER
20 SOCIETY HAD THE GREAT AMERICAN SMOKEOUT WHICH WAS STARTED
21 HERE IN CALIFORNIA, AND THE SEVENTH DAY ADVENTISTS WORKED
22 WITH THEM AND THE COUNTY OF PUBLIC HEALTH AND ALL THE OTHER
23 GROUPS THAT WERE OFFERING CLINICS TO MAKE SURE THAT NO ONE
24 IN LOS ANGELES HAD TO DRIVE MORE THAN 20 MINUTES TO GET TO
25 A CLINIC, A FREE CLINIC.

26 AND I THINK THAT WE ALL KNOW THAT DRIVING
27 ANYWHERE IN 20 MINUTES IN L.A. DOESN'T GET YOU NECESSARILY
28 VERY FAR. THERE WERE A LOT OF THINGS THAT WERE DONE.

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1 AND THEN THERE WERE A LOT OF PRIVATE
2 ORGANIZATIONS THAT I THINK ACTUALLY MADE A GOOD LIVING
3 HAVING THESE KINDS OF CLINICS. AND THE MOST FAMILIAR ONES,
4 TO ME, AT LEAST, WERE THE SCHICK PROGRAM, WHICH I THINK ARE
5 THE SAME AS THE RAZOR BLADE PEOPLE. AND THEN THERE WERE

6 JUST A NUMBER OF HOST OF OTHERS THAT ADVERTISED THEIR
7 SERVICES AND HAD -- A LOT OF PEOPLE PARTICIPATED IN THEM.
8 Q. AND THESE CLINICS RECEIVED A FAIR AMOUNT OF
9 PUBLICITY DURING THE PERIOD?

10 A. YES, THEY DID. THE NEWSPAPERS REPORTED ON
11 THEM A LOT.

12 Q. I'LL PUT UP NUMBER 23, WHICH IS 11,020.
13 WHAT'S THAT?

14 A. THESE ARE EXCERPTS FROM THE LOS ANGELES TIMES
15 THAT SHOW YOU A FEW OF THEM. YOU NOTICE -- BY THE WAY, THE
16 ONE IN THE MIDDLE TALKS ABOUT THE ADVENTISTS AND THEIR
17 WORK, WHICH REALLY WAS -- AGAIN, I WANT TO EMPHASIZE --
18 VERY AMAZING IN TERMS OF WHAT THEY WERE ACCOMPLISHING.
19 AND THEN THEY HAVE ONE ON THE RIGHT WHICH
20 SHOWS YOU THE Y.M.C.A. OFFERED A SMOKING CLINIC. THE ONE
21 ON THE LEFT AGAIN EMPHASIZES THAT THIS IS FREE.
22 THE COUNTY OF L.A. HAS THE ONE ON THE BOTTOM.
23 SO IT WAS REALLY A TREMENDOUS EFFORT. THIS WAS A PART OF
24 THE REMEDIAL ACTION ASPECT OF THINGS TO REALLY TELL PEOPLE
25 WE WANT TO HELP YOU, YOU CAN DO IT.
26 AND THEN, OF COURSE, THERE WERE ALSO
27 COMMERCIAL ANTI-SMOKING STUFF, ADS FOR ALL KINDS OF
28 THINGS -- CHEWING GUM, BANTRON -- DIFFERENT THINGS THAT
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1 PEOPLE THOUGHT YOU COULD USE TO QUIT SMOKING, AS WELL.
2 Q. NOW, YOU MENTIONED AT THE VERY BEGINNING WHEN
3 WE STARTED TALKING ABOUT THIS SECTION -- AND YOU REFERRED
4 TO 1964 TO '80 AS THE PERIOD WHERE REMEDIAL ACTION WAS
5 TAKEN.

6 AND AMONG THE HIGHLIGHTS OF THAT PERIOD THAT
7 YOU REFERRED TO, OR ONE OF THE IMPORTANT THEMES OF THE
8 PERIOD -- PROBABLY BETTER PUT -- WAS THE BEGINNING OF THE
9 CONSUMER MOVEMENT, THE ENVIRONMENTAL MOVEMENT.
10 WHY IS THAT SIGNIFICANT?

11 A. WELL, THAT'S SIGNIFICANT FOR A NUMBER OF
12 REASONS. IT CHANGES HOW PEOPLE FEEL, IN GENERAL, ABOUT THE
13 INDUSTRY. AND IT'S ALSO THE BEGINNING OF THIS NOTION THAT
14 THE INDUSTRY SHOULD HAVE WARNING LABELS AND THIS KIND OF
15 THING. AND THE TOBACCO INDUSTRY, AS I UNDERSTAND IT, WAS
16 THE FIRST INDUSTRY TO BE ASKED TO PUT -- THESE KIND OF
17 WARNING LABELS TO BE PUT ON, WHICH NOW HAS BECOME SO
18 COMMON -- I WAS THINKING ABOUT IT THE OTHER DAY, THINKING
19 DOES EVERYTHING HAVE A WARNING LABEL ON IT?
20 I LOOKED AT A BOTTLE OF WATER, WHICH SAID
21 SOMETHING ABOUT BE CAREFUL WHEN YOU REMOVE THE TOP OR
22 SOMETHING. IT'S REALLY THE START OF THAT.
23 AND ALSO, THERE IS A PERIOD IN WHICH THERE IS
24 A SEVERE CRITIQUE THAT BEGINS TO BE MADE ABOUT CORPORATIONS
25 IN AMERICA, PEOPLE LIKE RALPH NADER, PARTICULARLY, LEADING
26 THE WAY. AND HE ALSO, BY THE WAY, TOOK A STAND -- HE WAS
27 VERY FAMOUS, BY THE WAY, FOR CARS. HE WROTE THIS BOOK
28 CALLED "UNSAFE AT ANY SPEED." IT WAS ABOUT HOW THE CARS IN
3875

1 DETROIT WERE MADE IN SUCH A WAY YOU COULD GET KILLED REALLY
2 EASILY. SO THAT'S WHEN THEY CAME OUT WITH SAFETY BELTS.
3 BUT HE ALSO TARGETED THE CIGARETTE INDUSTRY
4 AND PARTICULARLY WANTED TO MAKE BANS ON THE AIRLINES, NO
5 SMOKING ON AIRLINES.

6 Q. LONG BEFORE RALPH NADER RAN FOR PRESIDENT HE
7 BECAME WELL KNOWN BY BEING ONE OF THE PIONEERS OF THE
8 CONSUMER RIGHTS MOVEMENTS BACK IN 1960?

9 A. THAT'S RIGHT. HE WAS THE MOST EMINENT PERSON
10 DOING THAT THEN.

11 Q. AND AS PART OF THESE MOVEMENTS, AS YOU
12 MENTIONED, THERE WAS SOMETHING OF A SHIFT IN HOW PEOPLE
13 FELT ABOUT CORPORATIONS?
14 A. YES, THERE WAS.
15 AND AGAIN, THIS IS SOMETHING THAT YOU REALLY
16 SEE IN THE '60S, IN GENERAL. WE MOVE AWAY FROM THIS KIND
17 OF EISENHOWER PERIOD, WHAT'S GOOD FOR GENERAL MOTORS IS
18 GOOD FOR YOU.
19 IN FACT, SPEAKING OF GENERAL MOTORS, RALPH
20 NADER IS ONE OF THE PEOPLE THAT SAID, NO, GENERAL MOTORS
21 MAKES CARS THAT ARE TERRIBLY UNSAFE. SO THIS IS A PERIOD
22 IN WHICH CORPORATIONS BEGIN TO GET -- IT'S NOT AN ALL-OUT
23 ATTACK. THERE IS DEFINITELY A CHANGE IN THE NATIONAL MOOD
24 TOWARDS LESS RESPECT, LESS DEFERENCE FOR CORPORATIONS, AND
25 YOU BEGIN TO SEE THESE PEOPLE EMERGING WHO ARE REAL
26 IMPORTANT SPEAKERS FOR THIS POINT OF VIEW.
27 Q. NOW, LET'S TALK FOR A COUPLE OF MINUTES ABOUT
28 HOW THE POSITION OF THE TOBACCO INDUSTRY WAS COVERED BY THE
3876
1 MEDIA AND POPLAR CULTURE DURING 1964 TO 1980.
2 YOU MENTIONED THIS MORNING THAT DURING THIS
3 PERIOD THERE WAS A DOWNPOUR, I THINK WAS THE WORD YOU USED,
4 OF INFORMATION ABOUT THE HEALTH RISKS DURING THIS PERIOD.
5 IS THAT RIGHT?
6 A. YES.
7 Q. WAS THERE ALSO A DOWNPOUR OF MEDIA ATTENTION
8 OR OTHER ATTENTION ON THE POSITION THAT THE TOBACCO
9 COMPANIES TOOK?
10 A. NO, THERE WAS NOT.
11 Q. CAN YOU GIVE US SOME COMPARISON ABOUT EVEN
12 AMOUNT OF COVERAGE, GREATER, LESSER? CAN YOU GIVE US A
13 LITTLE BIT MORE INFORMATION ABOUT THE COMPARISON?
14 A. I THINK YOU ASKED ME EARLIER WHAT WORD COULD
15 YOU USE TO DESCRIBE A MOUNT OF INFORMATION? I SAID
16 GIGANTIC.
17 AND I THINK THAT THE CORRESPONDING WORD WOULD
18 BE TINY, THAT THERE WAS A TINY AMOUNT OF INFORMATION ABOUT
19 WHAT THE TOBACCO INDUSTRY THOUGHT WHAT ITS POSITIONS WERE.
20 IT WAS THERE, BUT IT WAS A VERY, VERY SMALL AMOUNT
21 COMPARATIVELY.
22 Q. EARLIER ON WHEN WE WERE TALKING ABOUT THIS
23 PERIOD YOU CHARACTERIZED IT AS THE PERIOD WHERE THE DEBATE
24 WAS CLOSED?
25 A. EFFECTIVELY CLOSED.
26 Q. AS THE JURY HAS HEARD, THE TOBACCO INDUSTRY
27 CONTINUED TO DEBATE AFTER 1964?
28 A. THAT'S RIGHT.
3877
1 Q. AS YOU JUST EXPLAINED, THE VOLUME OF ATTENTION
2 THAT THEY GOT WAS JUST A TINY FRACTION OF WHAT WE SAW ABOUT
3 THE HEALTH RISKS OF SMOKING AND EFFORTS TO QUIT FROM A
4 VARIETY OF DIFFERENT SOURCES; IS THAT RIGHT?
5 A. THAT'S RIGHT.
6 Q. AS THIS PERIOD MOVED FORWARD FROM 1964 TO
7 1980, DID YOU NOTICE A CHANGE IN THE TONE OF THE COVERAGE
8 OF THE TOBACCO INDUSTRY'S POSITION TO THE EXTENT IT WAS
9 COVERED?
10 A. YES. I THINK THIS IS REFLECTED IN A NUMBER OF
11 WAYS.
12 AS I WAS SAYING, YOU GET A LOT OF PEOPLE
13 REALLY TAKING ON THE TOBACCO INDUSTRY IN A VERY VEHEMENT
14 WAY, SO THE TONE BEGINS TO SHIFT A BIT. THERE IS SOME
15 PEOPLE WHO ARE WELL KNOWN AT THAT TIME -- A WOMAN NAMED

16 MAUREEN NEWBERGER (PHONETIC), WHO WAS A SENATOR FROM
17 OREGON, AND SHE WAS A GREAT OPPONENT OF THE TOBACCO
18 INDUSTRY. AND SHE WROTE A BOOK AND IT WENT THROUGH TWO
19 PRINTINGS IN ONE YEAR.
20 PEOPLE LIKE ROBERT KENNEDY BEFORE -- THE YEAR
21 BEFORE HIS DEATH -- SORT OF FOLLOWING IN HIS BROTHER'S
22 FOOTSTEPS IN THIS RESPECT WITH THE FIRST SURGEON GENERAL'S
23 REPORT -- WAS SOMEONE WHO CAME OUT AND WAS VERY CRITICAL OF
24 THE INDUSTRY.
25 YOU START MOVING AWAY FROM "IT'S BAD FOR YOU,
26 IT'S BAD FOR YOU, IT'S BAD FOR YOU," TO "WE DON'T LIKE
27 THESE PEOPLE WHO ARE SELLING IT." IT'S MIXED. THIS IS
28 MORE OF A MIXED BAG FROM '64 TO '80, WHERE THERE IS SOME
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1 MORE NEUTRAL KIND OF BLAND COVERAGE OF THEIR POSITION, BUT
2 MIXED IN WITH A LOT OF HOSTILITY IN SOME QUARTERS.
3 Q. AND YOU BELIEVE THAT TO BE A SHIFT FROM THAT
4 FIRST PERIOD YOU WERE TALKING ABOUT, 1950 TO '64?
5 A. YES, IT'S A DEFINITE SHIFT. IT'S A DEFINITE
6 SHIFT.
7 YOU SEE NOT ONLY IS THE REPORTAGE -- THERE IS
8 NOT VERY MUCH REPORTAGE, BUT IT'S USUALLY FLANKED. LIKE IF
9 THEY SAY, HERE IS WHAT THE TOBACCO INDUSTRY SAYS ABOUT IT,
10 IT'S FLANKED BY INCHES OF COLUMNS SAYING -- AND THIS IS
11 REALLY, REALLY BAD FOR -- AND THEY SAY THIS, BUT WE ALL
12 KNOW, BLAH, BLAH, BLAH. SO IT'S IN BETWEEN. IT'S
13 SANDWICHED BETWEEN OTHER SORTS OF HOSTILE THINGS.
14 THAT'S TRUE OF THE TELEVISION COVERAGE, TOO.
15 WHEREAS EARLIER ON, LIKE THERE WAS A HARRY REASONER REPORT
16 TWO YEARS BEFORE THE ONE YOU JUST SAW A CLIP OF, AND IN
17 THAT HARRY REASONER REPORT THEY INTERVIEWED SOME TOBACCO
18 FARMERS. THEY INTERVIEWED SOME PEOPLE FROM THE INDUSTRY,
19 AND A SORT OF A SYMPATHETIC SIDE OF THEIR DILEMMA COMES
20 OUT. AND IT'S ACTUALLY VERY POIGNANT.
21 THESE FARMERS SAY, "WE DON'T MEAN TO HURT
22 ANYONE." YOU DON'T GET ANYTHING LIKE THAT LATER WHERE IT'S
23 SET UP IN SUCH A WAY THAT THE VIEWER MIGHT COME AWAY
24 FEELING LIKE THESE ARE PEOPLE LIKE ME.
25 Q. BY AND LARGE, TO THE EXTENT THE TOBACCO
26 INDUSTRY'S POSITION IS COVERED AT ALL, THEIR INFORMATION
27 ABOUT THE HEALTH RISK AT THE BEGINNING OF THE ARTICLE AND
28 THROUGH MOST OF IT, A COMMENT BY THE TOBACCO INDUSTRY, AND
3879

1 THEN MORE INFORMATION ABOUT HEALTH RISKS; IS THAT WHAT
2 YOU'RE SAYING?
3 A. YES, THAT'S FAR AND AWAY THE PREPONDERANT WAY
4 IN WHICH IT'S COVERED. THERE IS A COUPLE OF EXCEPTIONS
5 WHERE THEY SOMETIMES GO BACK ON THE INDUSTRY'S POSITION ON
6 SOMETHING. BUT IT'S VERY, VERY INFREQUENT.
7 Q. SO THERE ARE THE OCCASIONAL ARTICLES THAT
8 HIGHLIGHT THE INDUSTRY'S POSITION, BUT NOT MANY?
9 A. HOW MANY?
10 Q. NOT MANY.
11 A. SORRY. I COULDN'T HEAR OVER THAT.
12 NO, NOT MANY AT ALL.
13 Q. LET'S MOVE TO THE LAST PERIOD THAT WE'RE GOING
14 TO TALK ABOUT, 1980 TO 1994.
15 HOW WOULD YOU CHARACTERIZE THIS PERIOD?
16 A. I CALL THIS PERIOD TOWARDS THE SMOKE-FREE
17 SOCIETY. AND THIS IS THE PERIOD THAT I HONESTLY THINK WE
18 LIVE IN NOW, BUT IT BEGINS IN LATE 1980, ROUGHLY. AND I'M
19 CHOPPING IT OFF AT '94 FOR THE PURPOSES OF OUR DISCUSSIONS
20 CONCERNING MR. BOEKEN'S EXPERIENCE.

21 Q. AND WHAT MAKES THIS PERIOD, 1980 TO 1994,
22 DIFFERENT FROM '64 TO '80? WHAT ARE THE MAJOR THEMES?

23 A. WELL, I THINK THAT WHAT YOU SEE HERE -- IT'S A
24 VERY DIFFERENT SOCIETY. IT'S THE ONE THAT WE'RE GOING TO
25 RECOGNIZE THE MOST. THIS IS -- I CHOOSE 1980 A LITTLE
26 ARBITRARILY -- YOU HAVE TO DECIDE WHAT IS EXACTLY THE
27 TURNING POINT.

28 IT STARTS TO TURN BEFORE IT ACTUALLY TURNS ALL
3880

1 THE WAY. 1980 IS WHEN RONALD REAGAN IS ELECTED TO OFFICE.
2 IT'S A CONSERVATIVE PERIOD. SOME HISTORIANS CALL THIS THE
3 REAGAN ERA. AND YOU COME INTO A MUCH MORE CONSERVATIVE
4 SOCIAL ENVIRONMENT.

5 HOW THAT CHANGES THINGS, FIRST OF ALL, THAT
6 THERE IS SORT OF A ZERO TOLERANCE ATTITUDE TOWARDS QUITE A
7 NUMBER OF THINGS, ACTUALLY -- ZERO TOLERANCE OF DRUGS --
8 AND NANCY REAGAN'S PROGRAM, WHICH IS "JUST SAY NO."
9 YOU REMEMBER THAT, SAY NO TO ALL KINDS OF
10 THINGS THAT ARE BAD FOR YOU IN PEOPLE'S LIVES. THE FOCUS
11 WAS DRUGS, BUT THIS ALSO RELATED TO TEENAGE PREGNANCY AND
12 THINGS LIKE THAT.

13 SO YOU MOVE TOWARDS A MORE CONSERVATIVE SOCIAL
14 PERIOD. THERE IS NOT THIS SORT OF EMPHASIS ON LIFESTYLE
15 CHOICES. THERE ARE NOT SOME CHOICES, THERE ARE GOOD
16 CHOICES AND THERE ARE BAD CHOICES. AND IF YOU MAKE THE BAD
17 CHOICE THERE IS A WAY IN WHICH YOU'RE A BAD PERSON, TOO.
18 I THINK THAT'S THE TENOR OF THE TIMES. THAT'S
19 ONE IMPORTANT DIFFERENCE, THE CONSERVATIVE CLIMATE THAT
20 ARISES. AND HOW THAT RELATES TO SMOKING IS THAT SMOKERS
21 GET INCREASINGLY TARGETED THEMSELVES. THIS IS WHERE YOU
22 SEE THE CULMINATION, THE FRUITION OF THE ECOLOGY,
23 ECOLOGY-TYPE MOVEMENTS, WHERE YOU BEGIN TO GET REALLY
24 SIGNIFICANT LAWS LIMITING PEOPLE SMOKING. YOU KNOW,
25 ESPECIALLY SMOKERS LIMITING SMOKING AROUND NONSMOKERS.
26 YOU GET A LOT OF LAWS THAT GET PASSED IN THIS
27 PERIOD OF TIME. SO SMOKERS BECOME KIND OF PARIAHS --
28 THAT'S A WORD FROM THE L.A. TIMES -- UNTOUCHABLES, LIKE IN
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1 INDIA, AND ALSO KIND OF DEVIANT. AGAIN, THERE IS NOT THIS
2 SORT OF NOTION, I MAY NOT APPROVE, BUT YOU'RE AN ADULT, YOU
3 CAN MAKE YOUR CHOICES. IF YOU MAKE THE WRONG CHOICE,
4 YOU'RE A DEVIANT PERSON.

5 Q. IT'S NOW SEEN AS WRONG AS OPPOSED TO A CHOICE
6 THAT PEOPLE MAKE, UNDERSTANDING THE RISKS?

7 A. YES. IT'S NOT LIKE A GOOD CHOICE VERSUS THE
8 BAD CHOICE; IT'S THE WRONG CHOICE. AND ALSO THIS HAPPENS
9 IN RELATION TO THE INDUSTRY, TOO, WHICH I THINK IS AN
10 IMPORTANT PART OF THIS PERIOD.

11 Q. IN WHAT WAY?

12 A. WELL, BECAUSE IN THE '50S YOU SAW HERE MANY
13 INDUSTRIES, AND INDUSTRY IS GOOD FOR AMERICA, AND THIS IS
14 WHAT THEY SAY. AND THEN IN THE '60S YOU GET THIS SORT OF
15 MORE MIXED FEELING ABOUT INDUSTRIES, AND THERE ARE LOTS OF
16 OPPONENTS OF SMOKING WHO SORT OF ARISE.
17 AND THEN BY THE PERIOD AFTER 1980, THIS
18 INDUSTRY BECOMES LOOKED AT AS A DEVIANT INDUSTRY, A PARIAH
19 INDUSTRY.

20 IT'S NOT JUST ONE AMONG MANY INDUSTRIES THAT
21 PEOPLE JUDGE. AND I THINK PART OF THIS IS VERY CLEARLY A
22 PART OF THE SMOKING CESSATION STRATEGY, BY THE WAY, BECAUSE
23 SMOKING CESSATION STRATEGIES HAD MOVED A LONG WAYS SINCE
24 THE EARLY '60S.
25 IN THE EARLY '60S THE IDEA WAS THAT IF YOU

26 TELL PEOPLE THAT SOMETHING'S BAD FOR THEM, THEY WON'T DO
27 IT. THEN THEY FIGURED OUT THAT WASN'T GOOD ENOUGH. SOME
28 PEOPLE, SUPERRATIONAL TYPES, OR SOMETHING LIKE THAT, SAID,
3882

1 OKAY, I WON'T DO IT, IT'S BAD FOR ME.
2 THEN THEY MOVED IN THE MID '60S TOWARDS YOU'VE
3 GOT TO MAKE IT UNCOOL. YOU'VE GOT TO MAKE IT SOCIALLY
4 UNACCEPTABLE. AND SO THERE WERE A LOT OF STRATEGIES --
5 THE AMERICAN CANCER SOCIETY HAD ADS ABOUT YOUR BREATH
6 SMELLS, YOU'RE STINKY, IF YOU'RE SLEEPING BEAUTY AND YOU'RE
7 ASLEEP, THE PRINCE WON'T WANT TO KISS YOU AND WAKE YOU UP,
8 A LOT OF HUMOROUS THINGS LIKE THAT.
9 BUT THAT CHANGED AGAIN, AND BY THE BEGINNING
10 OF THE '80S, MOVING INTO THE LATE '80S, EARLY '90S, YOU GET
11 A REAL CLEAR STRATEGY THAT IF WE CAN MAKE PEOPLE DISLIKE
12 THE INDUSTRY THAT WILL ALSO HELP THEM QUIT, BECAUSE THEY
13 WILL FEEL THESE ARE BAD PEOPLE TAKING ADVANTAGE OF THEM.
14 Q. PART IS THE TARGETING OF THE INDUSTRY AND
15 PART IS THE ANTI-SMOKING CAMPAIGN TO CONVINCE PEOPLE NOT TO
16 SMOKE, FAIR ENOUGH?

17 A. YEAH, THAT'S FAIR ENOUGH.

18 Q. AND HELPED ALONG, I ASSUME, BY THE INDUSTRY
19 CONTINUING TO ISOLATE BY THE POSITION IT WAS TAKING?

20 A. I THINK THAT'S VERY FAIR TO SAY ALSO.

21 Q. LET'S TAKE A LOOK AT A COUPLE OF EXAMPLES OF
22 HOW THIS PERIOD CHANGED.

23 WE HAVE A CLIP FROM JOSEPH CALIFANO, WHICH IS
24 JUST A LITTLE BIT BEFORE THIS PERIOD, BEGINNING IN 1978.
25 IF YOU COULD EXPLAIN WHAT THAT CLIP IS AND WHY IT'S
26 SIGNIFICANT.

27 A. JOSEPH CALIFANO WAS THE SECRETARY OF HEALTH,
28 EDUCATION, AND WELFARE. HE REALLY COMES OUT OF THE '60S.
3883

1 I TALKED ABOUT GOVERNMENT REFORMISM FROM THE
2 '60S, AND HE WAS AN IMPORTANT FIGURE IN THE WAR ON POVERTY
3 UNDER PRESIDENT JOHNSON. SO HE WAS AN ACTIVIST WITH AN
4 ACTIVIST ORIENTATION. AND THEN HE BECAME SECRETARY OF
5 HEALTH, EDUCATION, AND WELFARE UNDER JIMMY CARTER. HE HAD
6 BEEN A SMOKER, AND HE STOPPED SMOKING.
7 THIS IS VERY IMPORTANT. ESSENTIALLY WHAT HE
8 DOES, HE TALKS ABOUT SMOKING AS PUBLIC ENEMY NUMBER 1. AND
9 SO SUDDENLY, YOU SEE THAT SHIFT OUT OF I MIGHT SMOKE, I
10 MIGHT NOT SMOKE, TO THIS IS LIKE AL CAPONE. THIS IS THE
11 BAD GANGSTERS.

12 Q. LET'S TAKE A LOOK AT THE CLIP.

13 (A VIDEOTAPE WAS PLAYED AND NOT REPORTED
14 PER STIPULATION OF COUNSEL.)

15 Q. BY MR. LEITER: AGAIN, THE QUALITY OF THE
16 SOUND WAS NOT GOOD.

17 THE TOBACCO INDUSTRY SUPPORTED PRICES TO
18 FARMERS?

19 A. YES.

20 Q. THIS IS WHERE CALIFANO REFERRED TO SMOKING AS
21 "PUBLIC ENEMY NO. 1"?

22 A. THAT'S RIGHT. THOSE ARE PROGRAMS THAT WERE
23 IMPLEMENTED. MOST OF THESE PROGRAMS, WE WANTED THIS
24 LABELING TO HAPPEN. WE WANTED ADVERTISING OFF THE AIRWAYS.
25 WE WANTED MORE MONEY SPENT ON THIS. THOSE THINGS ALL GET
26 DONE.

27 Q. DURING THIS PERIOD -- AND I DO WANT TO TALK A
28 LITTLE BIT MORE ABOUT REGULATIONS ISOLATING SMOKERS AND
3884

1 TARGETING THE INDUSTRY.

2 DURING THIS PERIOD IS THERE STILL A LOT OF
3 INFORMATION BEING MADE AVAILABLE TO PEOPLE ABOUT HEALTH
4 RISKS AND A LOT OF OFFERS BEING MADE TO HELP PEOPLE QUIT?
5 THAT DOESN'T TRAIL OFF WHEN WE GET TO 1980, DOES IT?
6 A. NOT AT ALL. THERE ARE HUNDREDS AND HUNDREDS
7 AND HUNDREDS OF ARTICLES FROM THE SAME PERIOD OF TIME.
8 PEOPLE HERE AGAIN, IN ALL DIFFERENT KINDS OF WAYS, LIKE
9 DEAR ABBY, SHE'LL TELL YOU ABOUT THE GREAT AMERICAN
10 SMOKEOUT. SHE'LL TELL YOU TO MAKE THIS YOUR NEW YEAR'S
11 RESOLUTION. SHE DOES IT EVERY YEAR.
12 DOCTORS' COLUMNS. AND THERE IS STILL MORE
13 RESEARCH THAT'S BEING DONE, SO THAT PEOPLE COME TO
14 UNDERSTAND -- SCIENTISTS DO -- BETTER THE MECHANICS OF HOW
15 IT ALL WORKS. SO EVERY TIME MORE DISCOVERIES ARE MADE
16 PEOPLE ARE HEARING ABOUT THOSE.
17 Q. LET'S TALK FOR A SECOND ABOUT THE GREAT
18 AMERICAN SMOKEOUT. WHAT IS THE GREAT AMERICAN SMOKEOUT?
19 A. WELL, THIS WAS A VERY EFFECTIVE PUBLICITY
20 PROGRAM, A WAY TO KIND OF JUMP-START PEOPLE TO NOT SMOKE.
21 AND IT ACTUALLY STARTED IN CALIFORNIA IN 1976,
22 AND THEY ALWAYS USED CELEBRITIES AS THE CHAIRMAN FOR IT.
23 SAMMY DAVIS, JR., WAS THE VERY FIRST ONE IN
24 CALIFORNIA. AND THEN WHAT HAPPENED, THE NEXT YEAR IT WAS
25 SO SUCCESSFUL THAT THE AMERICAN CANCER SOCIETY DECIDED TO
26 MAKE THIS A NATIONAL PROGRAM, WHICH THEY DO EVERY YEAR THE
27 WEEK BEFORE THANKSGIVING. AND IT -- THESE ARE TINY, TINY
28 SAMPLES OF ALL THE STUFF -- I COULD GIVE YOU HUNDREDS OF
3885

1 ARTICLES ON THE GREAT AMERICAN SMOKEOUT.
2 SO IT WAS A VERY IMPORTANT WAY THAT THE
3 MESSAGE GOT ACROSS. AND IF YOU'LL JUST NOT SMOKE FOR ONE
4 DAY, THAT MAYBE YOU'LL THEN NOT SMOKE THE NEXT DAY AND THE
5 NEXT DAY, AND THEY USE ALL THE FAMOUS STARS OF THE PERIOD.
6 Q. ONE OF THE STARS THAT I SEE YOU BROUGHT A CLIP
7 FROM IS LARRY HAGMAN FROM 1981. THIS IS THE PERIOD WHERE
8 THE T.V. SHOW "DALLAS" WAS ON?
9 A. THAT'S RIGHT. THERE AGAIN, THERE WERE DOZENS
10 OF THESE. I LIKE THIS PARTICULAR ONE. IT'S KIND OF
11 INTERESTING. YOU SEE HIM IN KIND OF HIS ROLE AS
12 J.R. EWING. AT THAT TIME THAT WAS A BIG DEAL. THEY WERE
13 VERY CLEVER AT PICKING PEOPLE WHO WOULD HAVE A LOT OF NAME
14 RECOGNITION AND WHO THEY COULD DO SOME FUNNY SPIN ON THE
15 ROLES THEY WERE PLAYING ON T.V. AND MOVIES.
16 Q. LET'S TAKE A LOOK AT THAT. IT'S 2.10.
17 (A VIDEOTAPE WAS PLAYED AND NOT REPORTED
18 PER STIPULATION OF COUNSEL.)
19 Q. BY MR. LEITER: AND THERE WERE DIFFERENT ADS
20 FROM DIFFERENT CELEBRITIES IN DIFFERENT YEARS?
21 A. LOTS OF GREAT CELEBRITIES -- ED ASNER, A
22 DANCER BY THE NAME OF YOLA, YUL BRYNNER, WILLIAM TOMLIN,
23 WHO -- HE WAS THE GUY WHO PLAYED THE PART IN PERRY MASON.
24 HE DIED OF LUNG CANCER. HE MADE A MOVING STATEMENT: "BY
25 THE TIME YOU SEE THIS I'LL BE DEAD."
26 Q. LET'S CHANGE GEARS JUST BRIEFLY AND TALK ABOUT
27 THE RISE OF THE ANTI-SMOKING LAWS AND REGULATIONS,
28 PARTICULARLY IN CALIFORNIA.
3886

1 IS THIS SOMETHING THAT REALLY BLOSSOMED DURING
2 THE 1980S?
3 A. IT STARTS REALLY IN THE '70S, BECOMES IRONCLAD
4 IN THE '80S AND '90S, IN PARTICULAR.
5 CALIFORNIA LEADS THE WAY BY A LONG HEAD
6 START. CALIFORNIA HAS ALMOST HALF OF ALL THE LOCAL

7 ANTI-SMOKING ORDINANCES.
8 L.A. STARTS, IN 1975 -- FOR EXAMPLE, TOM
9 BRADLEY, MAYOR, WAS A NONSMOKER. BUT THE CITY COUNCIL PUT
10 THIS UP. SAN DIEGO DID IT. ALL THROUGHOUT CALIFORNIA IN
11 THE MID '70S, IN THE '80S.
12 AS I SAID, IT BECOMES THE CASE THAT YOU CANNOT
13 SMOKE INSIDE BUILDINGS. CALIFORNIA PASSES A LAW THAT
14 ULTIMATELY BY THE MID '90S TAKES ALL THE STATE LOCAL
15 ORDINANCES AND PREEMPTS THEM FOR AN EVEN STRONGER STATEWIDE
16 ONE.

17 Q. TELL US ABOUT PROP 99?

18 A. PROPOSITION 99 IS VERY INTERESTING IN SOME
19 WAYS. IT'S THE VERY CULMINATION OF THIS WHOLE PERIOD, THE
20 WHOLE 40, 50 YEARS OF PEOPLE HEARING "IT'S NOT GOOD FOR
21 YOU."

22 CALIFORNIA PASSED A LAW -- WENT TO THE POLLS
23 AND PASSED THIS LAW IN 1988. BUT IT'S CALLED PROPOSITION
24 99. WHAT THAT DID IS IT PUT A REALLY BIG TAX ON
25 CIGARETTES, 25 CENTS A PACK. AND THIS ENDED UP GENERATING
26 MILLIONS AND MILLIONS OF DOLLARS EVERY YEAR, HUNDREDS OF
27 MILLIONS OF DOLLARS EVERY YEAR.

28 IN FACT -- AND WHAT A GOOD PORTION OF SOME OF
3887

1 IT WENT TO IS THINGS LIKE HEALTH COSTS AND HEALTH PROGRAMS
2 FOR KIDS AND ANYONE WHO IS POOR, THAT KIND OF THING. BUT A
3 GOOD PORTION OF IT WENT TO ANTI-SMOKING, YOU KNOW, PROGRAMS
4 AND PARTICULARLY MEDIA.

5 SO -- IN FACT, IT WAS A LOS ANGELES FIRM WHICH
6 GOT THE CONTRACT FOR THIS. AND THEY REALLY CHANGED THE
7 WHOLE NATURE OF HOW PEOPLE WENT ABOUT THIS. AND, IN FACT,
8 SOMEBODY SAID, GEE, CAN WE DO THIS? AND THEY SAID, WE'RE
9 CALIFORNIA, WE CAN DO IT DIFFERENTLY. WE WILL DO IT
10 DIFFERENTLY.

11 AND THE THRUST OF THEIR CAMPAIGN -- A LOT OF
12 IT WAS TO TARGET THE SMOKER AS BEING KIND OF A BAD PERSON.
13 I DON'T KNOW IF OTHERS WILL REMEMBER THIS ONE -- I REMEMBER
14 VERY WELL -- IT WAS THE AD -- BILLBOARD, RATHER -- WHICH
15 SAID -- A GLAMOROUS MAN, A GLAMOROUS WOMAN -- AND HE SAID,
16 "MIND IF I SMOKE?" AND SHE SAID, "CARE IF I DIE?"
17 THE IDEA IS YOU'RE A SMOKER, YOU'RE PUTTING ME
18 AT RISK, MY LIFE, SO YOU'RE A BAD PERSON.
19 THEN THE OTHER ONE -- IS THAT OKAY?

20 Q. GO AHEAD.

21 A. -- WAS THAT THEY TARGETED THE INDUSTRY. AND
22 THIS WAS REALLY WHAT WAS SO DIFFERENT ABOUT THE CALIFORNIA
23 PROGRAM, WHICH WON RAVES FROM OTHER PEOPLE WHO WANTED TO
24 SEE SMOKING DECLINE.
25 AND THIS IS WHERE THEY REALLY TARGETED THE
26 INDUSTRY. THE FIRST OF THE ADS THAT THEY DEVELOPED AIRED
27 HERE IN LOS ANGELES IN 1990, AND THEN THROUGHOUT THE STATE
28 IN THE SPRING OF 1990.

3888

1 AND THIS WAS ONE WHERE THEY FEATURED ACTORS
2 PORTRAYING TOBACCO EXECUTIVES AND PUT THESE WORDS IN THEIR
3 MOUTHS AND SAYING, "WE'RE NOT DOING THIS FOR OUR HEALTH,"
4 HA, HA, HA -- AND SO THESE VERY EVIL-LOOKING PEOPLE SAY
5 THIS. AND THEY RAN ONE AD, FOR EXAMPLE, FOR SIX YEARS.
6 AND A YEAR AFTER IT WENT OFF THE AIR THEY DID A STUDY --
7 THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH WANTED TO MAKE
8 SURE THEY WERE GETTING THEIR MONEY'S WORTH. THEY FOUND
9 THAT 96 PERCENT OF ADULTS THAT HADN'T SEEN IT FOR AT LEAST
10 A YEAR COULD STILL REMEMBER THAT AD.
11 THE RESULT OF THIS IS CALIFORNIA'S SMOKING

12 RATES WENT WAY, WAY DOWN.
13 Q. YOU'RE TALKING ABOUT ISOLATING THE SMOKER AND
14 SMOKING REGULATIONS THAT ESSENTIALLY ISOLATED SMOKERS WHICH
15 WOULD INCLUDE SMOKING BANS ON PLACES, RIGHT, IN BUILDINGS
16 AND ULTIMATELY NOW IN RESTAURANTS?
17 A. (NODDING HEAD.)
18 Q. AND YOU ALSO TALKED ABOUT ESSENTIALLY A
19 CAMPAIGN TO MAKE SMOKERS FEEL THAT THEY WERE DOING NOT JUST
20 SOMETHING THAT THEY WERE CHOOSING TO DO, BUT SOMETHING
21 WRONG; IS THAT CORRECT?
22 A. THAT'S RIGHT.
23 Q. AND YOU ALSO MENTIONED AT THE END OF THAT LAST
24 ANSWER HOW THE MEDIA AND OTHERS WERE STARTING TO
25 CHARACTERIZE THE POSITION OF THE TOBACCO INDUSTRY.
26 NOW, DURING THIS PERIOD THE TOBACCO INDUSTRY
27 STILL HADN'T SIGNED UP WITH THE SURGEON GENERAL AND THEY
28 WERE STILL DEBATING; WEREN'T THEY?

3889

1 A. THAT'S RIGHT.
2 Q. AND THERE WAS A SHIFT IN HOW THEY WERE
3 CHARACTERIZED IN THE MEDIA AND PUBLIC CULTURE?
4 A. VERY MUCH SO. YOU ALWAYS THINK OF THE OLD
5 WESTERN MOVIES WHERE YOU KIND OF KNEW WHO THE BAD GUY WAS
6 BY THE WAY THEY WERE DRESSED OR SOMETHING. HE WAS ALWAYS
7 THE BAD GUY.
8 AND WHAT YOU SEE IN THE MEDIA, FOR EXAMPLE --
9 THIS IS REFLECTED IN THE LOTS OF PLACES -- THE L.A. TIMES
10 IS A GOOD SPOT TO LOOK AT -- THEY WILL SOMETIMES SAY THE
11 POSITION, THEN THEY'LL SAY SOMETHING LIKE, WELL,
12 "PREDICTABLY." OR THEY WILL MAKE IT REALLY CLEAR THAT THEY
13 ARE ALMOST MAKING FUN OF THEM, THEY SORT OF BECOME THE BUTT
14 OF JOKES. THESE ARE NOT HAPPY JOKES. IT'S
15 WE-DON'T-LIKE-THESE-PEOPLE JOKES.

16 Q. I WANT TO SHOW A COUPLE OF EXAMPLES. AS WE
17 TALK ABOUT THE TOBACCO INDUSTRY, WAS MEDIA COVERAGE OF THE
18 TOBACCO INDUSTRY'S POSITION MUCH GREATER DURING THIS
19 PERIOD?

20 A. NO. IN FACT, I THINK IT FALLS AWAY. IT KEEPS
21 FALLING AWAY, BASICALLY. THEY ARE NOT -- THERE IS NOT A
22 LOT OF REPORTAGE ON THE TOBACCO -- THERE IS SOME, BUT THERE
23 IS NOT A LOT. AND WHEN IT IS THERE, IT'S OFTEN, AS I SAID,
24 PUT IN THIS ALMOST DERISIVE WAY.

25 Q. LESS AND LESS AND MORE CRITICAL TO THE EXTENT
26 IT IS COVERED?

27 A. YES.

28 Q. SO WE'VE COME A FAR WAY FROM THE BEGINNING OF
3890

1 THE PERIOD WHERE THERE WAS LITTLE COVERAGE BUT IT WAS
2 REPORTED KIND OF NEUTRALLY?

3 A. THAT'S CORRECT.

4 Q. LET'S TAKE A LOOK AT NUMBER 40, WHICH IS FROM
5 THE LOS ANGELES TIMES.

6 IS THIS AN EXAMPLE OF WHAT YOU WERE TALKING
7 ABOUT?

8 A. YES. THIS IS A NATIONAL COLUMNIST, A
9 NATIONALLY SYNDICATED COLUMNIST, BY THE NAME OF ELLEN
10 GOODMAN, AND SHE SAYS IN THE FIRST LINE:

11 "THERE IS INEVITABLE FLASH
12 OF RECOGNITION. YET ANOTHER STUDY
13 ON SMOKING."

14 AND EVEN THAT SORT OF EXHIBITS COMMON
15 KNOWLEDGE. YES, WE RECOGNIZE THIS ALL THE TIME.
16 "YET ANOTHER REPORT MORE

17 METICULOUSLY RESEARCHED AND ANALYZED
18 THAN THE LAST PROVES WHAT WE ALREADY
19 KNOW, ANYONE WHO SMOKES IS NUTS.
20 THIS STUDY, LIKE THE OTHERS, WILL BE
21 FOLLOWED BY A WORD FROM OUR FAVORITE
22 SPONSOR, THOSE WONDERFUL PEOPLE AT
23 THE TOBACCO INSTITUTE. THE TOBACCO
24 INSTITUTE APPARENTLY EMPLOYS LEGIONS
25 OF GNOMES WHO SPEND THEIR DAYS
26 DEVISING BAROQUE REBUTTALS TO
27 SCIENTIFIC RESEARCH."
28 SO IT'S PRETTY SARCASTIC.

3891

1 Q. TAKE A LOOK AT STRAIGHT NEWS COVERAGE,
2 NUMBER 49 FROM TIME MAGAZINE SEEN DURING THIS PERIOD.
3 THIS IS MARCH 8, 1982. AND BEFORE WE GET TO
4 THE ACTUAL QUOTE, IS THIS WHAT YOU TALKED ABOUT BRACKETING?
5 BASICALLY THIS IS A REPORT ABOUT THE 1982 SURGEON GENERAL'S
6 REPORT.

7 A. YES.

8 Q. CAN YOU EXPLAIN WHAT YOU MEAN HOW THIS IS
9 A SAMPLE OF BRACKETING?

10 A. I THINK THE WORD I USED WAS "FLANKED."
11 YOU HAVE THIS VERY LONG -- YOU CAN SEE THIS IS
12 FOUR COLUMNS TYPED, AND IT CONTINUES ON TOP OF THE NEXT
13 PAGE. AND WHEN THEY ARE TALKING ABOUT THE TOBACCO
14 INDUSTRY'S RESPONSE, THEY BEGIN WITH THE WORD
15 "PREDICTABLY."
16 THE INDUSTRY FUNDED TOBACCO INSTITUTE --
17 FUNDED THE REPORT -- THAT'S SOMETHING IMPORTANT, TOO, THEY
18 ARE ALWAYS SAYING THE INDUSTRY FUNDED. YOU'RE ALERTED AS A
19 READER THAT THIS IS A COMMERCIAL THING. THESE ARE PEOPLE
20 WHOSE ECONOMIC INTERESTS ARE AT STAKE. THEY SAY --
21 THE REPORTER: COULD I HAVE YOU READ SLOWER, PLEASE.
22 THE WITNESS: (READING:)
23 "WHILE MANY PEOPLE BELIEVE A
24 CAUSAL LINK BETWEEN SMOKING AND
25 CANCER IS A GIVEN, SCIENTIFIC
26 RESEARCH HAS NOT BEEN ABLE TO
27 ESTABLISH THAT LINK, NOR HAS IT BEEN
28 ABLE TO DETERMINE HOW NORMAL CELLS

3892

1 BECOME CANCEROUS."

2 Q. BY MR. LEITER: THEN IT TALKS MORE ABOUT WHAT
3 IS IN THE SURGEON GENERAL'S REPORT?

4 A. EXACTLY. IT BASICALLY TELLS US, WE KNOW THIS
5 STUFF. THERE IS NO DISPUTE.

6 Q. "PREDICTABLY" IS OBVIOUSLY AN EDITORIAL WORD?

7 A. THEY KIND OF SNEAK IT INTO THAT ONE. THEY ARE
8 SAYING THIS IS INTENDED AS A STRAIGHT NEWS REPORT, BUT I
9 THINK THAT THE FEELING, THE ATTITUDE THEY HAVE, IS EVIDENT
10 IN JUST THAT FIRST WORD.

11 Q. NOW, AS THE PERIOD MOVES FORWARD, DOES THE
12 HOSTILITY STAY THE SAME, INCREASE, DECREASE, TOWARD THE
13 INDUSTRY?

14 A. I THINK IT MOUNTS. AND YOU CAN SEE THIS IN
15 PART OF IT, AS YOU SAID, GOES BACK TO THE INDUSTRY'S
16 STATEMENTS, THAT PEOPLE DIDN'T LIKE AND FELT ANNOYED BY
17 IT.

18 Q. LET'S MOVE RIGHT AHEAD TO 1994. IN 1994 WAS
19 THE DATE -- THE YEAR THAT THE TOBACCO EXECUTIVES WERE
20 CALLED IN FRONT OF CONGRESS AND THE JURY HAS SEEN SOME
21 CLIPS FROM THAT TESTIMONY.

22 YOU'RE FAMILIAR WITH THAT TESTIMONY?

23 A. YES, I AM.

24 Q. ARE YOU ALSO FAMILIAR WITH HOW IT WAS
25 PORTRAYED IN THE PRESS?

26 A. YES, I AM.

27 Q. HOW WAS IT PORTRAYED?

28 A. WELL, WITH I THINK HEAPS OF SCORN FOR THE MOST
3893

1 PART. IN FACT, IT WAS -- IT WAS SUCH A RIPE OPPORTUNITY
2 FOR THE ADVERTISERS HERE IN LOS ANGELES WHO ARE MAKING
3 THESE ANTI-SMOKING COMMERCIALS, THAT THEY IMMEDIATELY TOOK
4 IT, AND WITHIN FOUR MONTHS HAD TURNED IT AROUND TO A P.S.A.

5 Q. IT WAS A PUBLIC SERVICE ANNOUNCEMENT FOR THE
6 AMERICAN CANCER SOCIETY OR ANOTHER ANTI-SMOKING
7 ORGANIZATION USING THE WORDS FROM THE EXECUTIVES' OWN
8 MOUTHS?

9 A. RIGHT. AND THE SUBTITLE WAS, "DO THEY THINK
10 WE'RE STUPID?" AND THE ANSWER OF THE PUBLIC, OF COURSE, IS
11 NO, WE'RE NOT STUPID.

12 Q. LET'S TAKE A LOOK AT NUMBER 46. IS THAT AN
13 EXAMPLE OF THE COVERAGE IN THE LOS ANGELES TIMES OF THE
14 WAXMAN HEARINGS?

15 A. YES. THAT IS COVERAGE OF THE L.A. TIMES.

16 Q. IS THAT CONSISTENT OR TYPICAL OF THE KIND OF
17 COVERAGE THAT YOU FOUND?

18 A. YES. IN FACT, THAT LAST SENTENCE, THIRD
19 ANSWER, THAT IT WAS DONE TO IMPROVE FLAVOR, WAS WIDELY
20 DERIDED. I THINK IT'S WIDELY DERIDED BECAUSE THE PUBLIC
21 HAS GOTTEN TO THAT POINT THEY JUST DON'T BELIEVE THEM AT
22 ALL ANYMORE.

23 Q. BECAUSE THE PUBLIC HAS RECEIVED SO MUCH
24 INFORMATION FROM SO MANY DIFFERENT SOURCES ABOUT THE HEALTH
25 RISKS?

26 A. YES. THEY RECEIVED INFORMATION ABOUT THE
27 HEALTH RISKS FOR 40 YEARS AND THEY'VE ALSO HEARD A LOT OF
28 VERY VOCIFEROUS CRITIQUES OF THE TOBACCO INDUSTRY.

3894

1 Q. NOW, WE'VE COVERED THE PERIOD 1950 TO 1994
2 WITH A SHORT DIVERSION BACK TO 1492. AND I JUST HAVE A
3 COUPLE OF OTHER THINGS THAT I WANT TO COVER WITH YOU BEFORE
4 I'M DONE.

5 NOW, WE'VE TALKED FOR MOST OF THE DAY ABOUT A
6 LOT OF THE INFORMATION THAT WAS AVAILABLE TO PEOPLE OUT
7 THERE. WE DIDN'T REALLY TALK THAT MUCH ABOUT ADVERTISING.
8 WHY NOT?

9 A. WELL, AS I DEFINED MY QUESTION, IT HAD TO DO
10 WHAT DID PEOPLE KNOW ABOUT THE HEALTH RISKS AND WHEN DID
11 THEY KNOW THEM AND HOW DID THEY KNOW THEM? SO WHAT I
12 LOOKED AT PRIMARILY IS THE INFORMATION THAT PEOPLE WERE
13 GETTING THAT WOULD TELL THEM THIS IS A BAD THING FOR YOU.
14 ADVERTISING WAS A PART OF THE HISTORICAL
15 UNIVERSE. IT'S THE PART OF WHAT PEOPLE HEAR AND KNOW, SO I
16 CERTAINLY CAME ACROSS IT, BUT I DID NOT FEEL THAT IT REALLY
17 WAS IMPORTANT FOR ANSWERING THAT QUESTION.

18 Q. WHY DIDN'T YOU FEEL THAT CIGARETTE ADVERTISING
19 WOULD BE IMPORTANT TO AN EVALUATION OF COMMON KNOWLEDGE
20 ABOUT THE HEALTH RISKS OF SMOKING?

21 A. WELL, THERE WERE SEVERAL REASONS. ONE OF THE
22 MOST IMPORTANT REASONS IS THAT IT HAS TO DO WITH THE WAY
23 ADVERTISING ITSELF WORKS. ALTHOUGH I'M NOT AN ADVERTISING
24 EXPERT, BUT I DO KNOW ABOUT IT, THE GENERAL HISTORICAL
25 CONTEXT, AND ONE IS SIMPLY THAT PEOPLE ARE INUNDATED WITH
26 ADVERTISING. ADVERTISING REALLY WAS INVENTED AT THE START

27 OF THE 20TH CENTURY. IT COMES OUT AS PART OF THE
28 INDUSTRIAL REVOLUTION. WE HAVE ALL THE THESE PRODUCTS.
3895

1 NOW YOU HAVE TO BUY -- BUY MINE, DON'T BUY HIS, KIND OF
2 THING.

3 PEOPLE HEAR IT ALL THE TIME. IT'S THE FREEWAY
4 NOISE IN MODERN SOCIETY. IT'S THERE. WE DO OUR BEST TO
5 KIND OF TUNE IT OUT. THAT'S WHY YOU HAVE MUTE BUTTONS ON
6 TELEVISION CONTROLS.

7 SO I THINK TO A LARGE EXTENT, EVEN THOUGH
8 THERE IS A LOT, IT'S NOT WHAT PEOPLE GO TO TO LOOK FOR
9 HEALTH INFORMATION.

10 Q. BEFORE YOU MOVE ON. WHEN YOU SAY PEOPLE ARE
11 INUNDATED WITH ADVERTISING, YOU MEAN ADVERTISING FOR ALL
12 PRODUCTS FROM ALL TYPES OF ADVERTISING, YOU'RE NOT
13 REFERRING SPECIFICALLY TO CIGARETTE ADVERTISING?

14 A. THAT'S RIGHT. AND, IN FACT, CIGARETTE
15 ADVERTISING IS ONE OF -- IS NOT ONE OF THE PRIMARY THINGS
16 THAT IS ADVERTISED EVEN. IN THE NEWSPAPERS, FOR EXAMPLE,
17 IT WAS LESS THAN ONE PERCENT OF NEWSPAPER ADVERTISING,
18 DISPLAY ADVERTISING, IS CIGARETTES.

19 SO PEOPLE GET A LOT AT ALL TYPES OF
20 ADVERTISING WHICH THEY TRY THEIR VERY BEST TO NOT HAVE TO
21 LISTEN TO. BUT THEN CIGARETTES THEMSELVES ARE A RELATIVELY
22 SMALL PORTION OF THAT, CERTAINLY IN PRINTED MATTER. AND
23 THEN THEY ARE ACTUALLY OFF THE AIRWAYS ALTOGETHER AFTER
24 1971.

25 Q. SO CIGARETTES HAVEN'T BEEN ON TELEVISION FOR
26 30 YEARS?

27 A. A LITTLE BIT MORE THAN 30 YEARS.

28 Q. AND WHILE THERE WAS A LOT OF CIGARETTE
3896

1 ADVERTISING, IT'S A SMALL PERCENTAGE OF ALL THE ADVERTISING
2 THAT PEOPLE SEE, FAIR ENOUGH?

3 A. THAT'S TRUE.

4 Q. WHAT IS IT ABOUT SOURCE CREDIBILITY THAT'S
5 RELEVANT TO YOUR OPINION?

6 A. WELL, IT'S ALSO -- PART OF THE HISTORY OF
7 ADVERTISING IS THE HISTORY OF HOW PEOPLE HAVE FELT ABOUT
8 ADVERTISING, WHICH IS THAT THEY DON'T BELIEVE A LOT OF IT.
9 THERE HAS BEEN A LOT OF CRITIQUES OF ADVERTISING, THAT
10 AGAIN GOES BACK TO THE START OF THE CENTURY. A LOT OF
11 REALLY INTERESTING CRITIQUES.
12 PEOPLE SORT OF KNOW IT'S MOSTLY HOGWASH, YOU
13 KNOW, THAT THE CAR MAY HAVE A BEAUTIFUL GIRL IN IT, BUT YOU
14 DON'T GET THE GIRL. THAT YOU MAY BRUSH AND BRUSH AND BRUSH
15 WITH PEPSODENT BUT YOUR TEETH REALLY ARE NOT GOING TO BE AS
16 WHITE AS THE MOVIE STARS.

17 I THINK FOR MOST PEOPLE THAT THERE IS AN
18 UNDERSTANDING THAT THIS IS COMMERCIALLY DRIVEN, THAT
19 SOMEBODY IS TRYING TO SELL YOU SOMETHING. WHEN PEOPLE TRY
20 TO SELL YOU THINGS, THEY MAKE IT LOOK GOOD.

21 Q. AND IN ADDITION TO SEEING ADVERTISING THAT
22 YOU'VE JUST DISCUSSED, PEOPLE SAW OTHER INFORMATION FROM A
23 WIDE VARIETY OF SOURCES?

24 A. YES. AND REALLY I THINK THAT AS SOURCES,
25 THOSE WERE SO MUCH MORE IMPORTANT TO PEOPLE. IF YOUR
26 MOTHER TELLS YOU, IF YOUR CHURCH TELLS YOU, IF IT'S AGAINST
27 THE LAW TO DO IT, IF THE GOVERNMENT IS WARNING YOU, IF IN
28 POPULAR CULTURE YOU'RE HEARING IT CALLED CANCER STICKS,
3897

1 COFFIN NAILS, IF PEOPLE IN MOVIES LIKE "LETHAL WEAPON" SAY,
2 "HEY, LET'S HAVE A CIGARETTE TOGETHER, WE CAN BOTH DIE OF

3 CANCER," ALL OF THOSE KINDS OF THINGS -- THE BODY LANGUAGE
4 IS SUCH YOU KIND OF HAVE TO HIDE YOUR CIGARETTE. YOU DON'T
5 WANT SOMEONE TO KNOW YOU'RE A SMOKER. THOSE THINGS ARE
6 MUCH MORE POWERFUL AND THEY TELL YOU IT'S BAD FOR YOU.
7 THEY DON'T TELL YOU IT'S A PRETTY DAY IN NEW YORK WHERE
8 SOMEBODY IS SMOKING.

9 Q. ANOTHER SUBJECT BEFORE I FINISH. WE'VE TALKED
10 A COUPLE OF TIMES DURING THE COURSE OF TODAY ABOUT THE
11 VOLUME OF ARTICLES, OR VOLUME OF INFORMATION THAT WAS OUT
12 THERE ABOUT THE HEALTH RISKS, AND AS COMPARED TO THE VOLUME
13 OF INFORMATION THAT WAS OUT THERE ABOUT THE TOBACCO
14 INDUSTRY'S POSITION.

15 DID YOU, DURING THE COURSE OF YOUR RESEARCH,
16 TRY TO QUANTIFY THAT IN ANY WAY?

17 A. YES, I DID. AND I TOOK THE LOS ANGELES TIMES,
18 BECAUSE THE STORY IS SET IN LOS ANGELES, AND I THOUGHT IT
19 WOULD BE A GOOD WAY -- YOU CAN'T QUANTIFY EVERYTHING -- ALL
20 THE TELEVISION, ALL THE THISES AND THATS.

21 I TOOK THE L.A. TIMES AND I TRIED TO FIND OUT
22 EXACTLY HOW MANY ARTICLES WOULD TELL YOU IN ONE WAY OR
23 ANOTHER THAT YOU REALLY OUGHT NOT TO SMOKE FOR YOUR HEALTH.

24 Q. AND YOU USED THE L.A. TIMES AS AN EXAMPLE?

25 A. YES.

26 Q. YOU COULD GET SIMILAR RESULTS FROM OTHER
27 PUBLICATIONS?

28 A. YES, I THINK SO.

3898

1 Q. I'M SORRY. I INTERRUPTED YOU. YOU WERE IN
2 THE MIDDLE.

3 A. NO. THAT'S OKAY.

4 SO ALL THE ARTICLES WHICH WOULD DO THAT. AND
5 THEN I REALLY WANTED TO FIND HOW MANY ARTICLES THAT THERE
6 WOULD BE THAT THE TOBACCO INDUSTRY IN THIS ARTICLE, THE
7 FOCUS OF IT WAS GOING TO BE, "WE WANT YOU TO KNOW THAT NOT
8 ALL THE EVIDENCE IS IN," AND "WE DON'T THINK IT CAUSES LUNG
9 CANCER," THAT KIND OF THING.

10 Q. LET ME PUT OUT HERE A BOX FILLED WITH PAPER
11 FOR WHICH WE HAVE NOTED THE EXHIBIT NUMBERS. BUT AS YOU'LL
12 SEE IN A MINUTE, I WON'T RECITE THEM.
13 THERE ARE COPIES IN THAT BOX OF 2,287
14 NEWSPAPER ARTICLES FROM THE LOS ANGELES TIMES.
15 WHAT DOES THAT REPRESENT?

16 A. THIS REPRESENTS ALL THE ARTICLES THAT I COULD
17 FIND THAT TALKED ABOUT, IN ONE WAY OR ANOTHER, SMOKING AND
18 HEALTH.

19 SOME OF THESE ARTICLES WERE LIKE THE ONES YOU
20 SAW WITH THE HEADLINES. THE ARTICLE IS LIKE WYNDER AND
21 GRAHAM. IT'S BASICALLY WHAT IT'S ABOUT.
22 IT SAYS SMOKING WILL KILL SOME PERCENTAGE OF
23 THE PEOPLE WHO DO IT. THERE WERE SOME ARTICLES WHERE THAT
24 WASN'T THE WHOLE ARTICLE. IT MAY HAVE BEEN A DOCTOR'S
25 ADVICE COLUMN, AND ONE SMALL PART OF IT IS ABOUT SMOKING.
26 THE PART ABOUT SMOKING THAT'S IN THERE TELLS YOU AGAIN THAT
27 YOU REALLY SHOULDN'T DO IT.

28 Q. WHAT TIME PERIOD ARE WE TALKING ABOUT, THESE

3899

1 2,287 ARTICLES?

2 A. THESE GO FROM JANUARY OF 1950 UP THROUGH JUNE
3 OF 1994, BECAUSE IN HIS DEPOSITION MR. BOEKEN SAID THAT
4 WHEN HIS MOTHER DIED IN JUNE OF 1994 OF LUNG CANCER THAT
5 THAT'S WHEN HE REALIZED THAT YOU COULD DIE OF LUNG CANCER
6 FROM SMOKING.

7 Q. DURING THAT PERIOD IN JUST THE LOS ANGELES

8 TIMES YOU FOUND 2,287 ARTICLES THAT PREDOMINANTLY OR
9 BASICALLY WERE ABOUT THE HEALTH RISKS OF SMOKING?
10 A. THAT'S RIGHT.
11 Q. HOW MANY OF THOSE ARTICLES MENTION THE TOBACCO
12 INDUSTRY'S POSITION?
13 A. MY PRECISE NUMBER WAS 130, 131. THE
14 PERCENTAGE WAS ABOUT 5.6 PERCENT. FIVE PERCENT.
15 Q. ABOUT 5 PERCENT OF THE ARTICLES HAVE SOME
16 REFERENCE SOMEWHERE IN THE ARTICLE TO THE TOBACCO
17 INDUSTRY'S POSITION?
18 A. THAT'S RIGHT.
19 Q. ARE THOSE THE ONES -- I HOPE I USE THE RIGHT
20 WORD THIS TIME -- THAT ARE FLANKED BY CONTRARY INFORMATION?
21 A. YES. THAT'S RIGHT. OFTEN IT'S A ONE-LINER.
22 SOMETIMES IT'S NOT. MAYBE IT'S TWO TO THREE LINES. BUT
23 THE MOST TYPICAL IS THAT IT'S A ONE BRIEF LINE TOWARDS THE
24 END WHICH WILL SAY SOMETHING THAT THE TOBACCO INDUSTRY
25 DOESN'T THINK THIS IS CONCLUSIVE.
26 Q. THAT OCCURS IN ABOUT 5 PERCENT OF THESE
27 ARTICLES AND 95 PERCENT DON'T MENTION THE TOBACCO
28 INDUSTRY'S POSITION AT ALL?
3900
1 A. THAT'S CORRECT.
2 Q. I'M GOING TO PUT ANOTHER STACK -- I'LL BORROW
3 THE POINTER. THANK YOU.
4 IF I COULD PUT ANOTHER STACK OF ARTICLES NEXT
5 TO THE 2,287. ALSO, WE HAVE A CHART IDENTIFYING THEM BY
6 EXHIBIT NUMBER.
7 THERE ARE 41 L.A. TIMES ARTICLES IN THAT
8 STACK. AND WHAT DOES THAT STACK REPRESENT?
9 A. THIS STACK IS A STACK OF THE 41 ARTICLES, AND
10 NOT JUST ARTICLES. THIS IS THE ONLY STACK, BY THE WAY,
11 WHICH I INCLUDED IN THE ADS. IT ALSO INCLUDES ADS BY THE
12 TOBACCO INDUSTRY.
13 Q. LIKE THE FRANK STATEMENT?
14 A. LIKE THE FRANK STATEMENT. THERE ARE A LOT OF
15 ANTI-SMOKING ADS WHICH DON'T GO INTO THE PILE.
16 ONE, I DIDN'T WANT IT TO BE TOO HEAVY TO LIFT.
17 I ONLY USED ADVERTISING. IF IT WAS AN ADVERTISING
18 STATEMENT BY THE TOBACCO INDUSTRY, LIKE THE FRANK
19 STATEMENT, "WE'RE GOING TO DO MORE RESEARCH AND WE'LL GET
20 BACK TO YOU." SO THAT 41 ARTICLES ARE A FEW ADS. NOT MANY
21 OF THOSE ARE ARTICLES WHERE THE EMPHASIS ON THE ARTICLE IS
22 WHAT THE INDUSTRY IS SAYING. STILL, BY THE WAY, IT
23 REFERENCES THESE ARTICLES TO SOMEBODY ELSE'S RESEARCH WHERE
24 THEY SAY, NO, THAT'S NOT THE CASE; IT IS PROVEN.
25 Q. SO 41 ARTICLES PREDOMINANTLY ABOUT THE TOBACCO
26 INDUSTRY'S POSITION FROM 1950 TO 1994; IS THAT RIGHT?
27 A. THAT'S ALL OF THEM.
28 Q. AND IT COMES OUT TO LESS THAN ONE A YEAR, ON
3901
1 AVERAGE?
2 A. THAT'S CORRECT.
3 Q. LAST POINT.
4 HAVE YOU TAKEN A LOOK AT STATISTICS ON SMOKING
5 RATES OVER TIME AND THE ISSUE AS TO WHETHER ALL OF THIS
6 INFORMATION ABOUT THE HEALTH RISKS OF SMOKING HAS HAD AN
7 EFFECT ON SMOKING IN AMERICA?
8 A. YES, I HAVE.
9 Q. WHAT DID YOU FIND?
10 A. WELL, I FOUND THAT COMMON KNOWLEDGE WAS
11 REFLECTED IN COMMON BEHAVIOR, WHICH TO ME IS AN IMPORTANT
12 ELEMENT OF THE HISTORICAL PICTURE, ANY TIME YOU'RE LOOKING

13 AT SOMETHING IN ITS FULL CONTEXT.
14 AND WHAT I FOUND WAS THAT SMOKING HAS DECLINED
15 PRECIPITOUSLY IN THE UNITED STATES FROM THE LATE '50S TO
16 THE PRESENT. IT'S VERY, VERY LOW.
17 AND ALSO INTERESTINGLY -- AND I THOUGHT
18 CALIFORNIA COULD PAT THEMSELVES ON THE BACK IN THIS
19 RESPECT -- CALIFORNIANS STARTED OUT SMOKING MORE AND WE NOW
20 SMOKE FAR BELOW THE NATIONAL AVERAGE.
21 Q. LET ME SHOW YOU A COUPLE OF CHARTS.
22 THIS ONE THE JURY HAS SEEN BEFORE. ARE YOU
23 FAMILIAR WITH THIS CHART?
24 A. YES, I AM.
25 Q. THIS IS DATA FROM THE SURGEON GENERAL'S
26 REPORT.
27 A. PARDON?
28 Q. THIS DATA IS FROM THE FEDERAL GOVERNMENT?
3902

1 A. FROM THE FEDERAL GOVERNMENT, RIGHT, FROM THE
2 CENTERS FOR DISEASE CONTROL AND THE SURGEON GENERAL'S
3 REPORT.
4 Q. ARE THESE THE NUMBERS YOU WERE TALKING ABOUT
5 ABOUT THE DECLINE IN SMOKING RATES OVER TIME?
6 A. YES, THAT'S RIGHT.
7 Q. AND HAVE YOU ALSO REVIEWED THE 1989 SURGEON
8 GENERAL'S REPORT ABOUT THE SUCCESS OF THE PUBLIC HEALTH
9 CAMPAIGN?
10 A. YES, I HAVE.
11 Q. LET'S TAKE A LOOK AT NUMBER 48. AND I'VE LOST
12 TRACK OF MY NUMBERING.
13 THE CLERK: IT WOULD BE 11,024.
14 MR. LEITER: THANK YOU.
15 Q. 11,024.
16 AND WHAT IS THIS?
17 A. WELL, THIS IS THE REPORT OF THE SURGEON
18 GENERAL. THE SURGEON GENERAL'S OFFICE PUTS OUT REPORTS
19 CONTINUOUSLY SINCE 1964. THEY MISSED A COUPLE OF YEARS.
20 IN THIS PARTICULAR ONE THEY WERE LOOKING BACK
21 AT THE QUARTER CENTURY MARK, SINCE 1964, AND ASKING HOW
22 HAVE WE DONE?
23 AND AS YOU CAN SEE, THE FIRST QUOTE SAYS:
24 "THESE DEVELOPMENTS HAVE
25 CHANGED THE WAY IN WHICH OUR SOCIETY
26 VIEWS SMOKING. THE ASHTRAY IS
27 FOLLOWING THE SPITTOON INTO
28 OBLIVION."
3903

1 I THINK THIS IS VERY RELEVANT BECAUSE IT SHOWS
2 AGAIN THAT THERE IS A REAL WHOLE SOCIAL-FEEL CHANGE, HOW
3 PEOPLE FEEL ABOUT SMOKING, HOW THEY FEEL ABOUT SMOKERS,
4 ABOUT PEOPLE WHO SELL SMOKING PRODUCTS.
5 AND THEY COMPARE IT TO THE SPITTOON, WHICH OF
6 COURSE REFERS TO PEOPLE CHEWING TOBACCO. THE SPITTOON WAS
7 CONSIDERED RESPONSIBLE FOR THE CAUSE OF TUBERCULOSIS. ALL
8 THE SPITTING THAT PEOPLE WERE DOING, IT HELPED TO SPREAD
9 TUBERCULOSIS. IT WAS A GRAVE MEDICAL SITUATION.
10 SO NOW THIS IS GOING AWAY. YOU DON'T SEE
11 SPITTOONS IN ANY COURTROOMS TODAY, AND YOU DON'T SEE
12 ASHTRAYS.
13 I RECENTLY WAS TAKING NOTE OF THE FACT THAT
14 CARS DON'T HAVE ASHTRAYS NOW. MY CAR DOESN'T. I NEVER
15 NOTICED IT BECAUSE I DON'T SMOKE. YOU DON'T EVEN HAVE THEM
16 IN YOUR CAR.
17 Q. AND THE LAST QUOTE IS:

18 "THESE CHANGES REPRESENT
19 NOTHING LESS THAN A REVOLUTION IN
20 BEHAVIOR. THE ANTI-SMOKING CAMPAIGN
21 HAS BEEN A MAJOR PUBLIC HEALTH
22 SUCCESS."
23 THE LAST GRAPHIC I'D LIKE TO SHOW YOU
24 MENTIONED HOW CALIFORNIA BECAME ONE OF THE LEADERS IN
25 WARNING PEOPLE ABOUT THE HEALTH RISKS OF SMOKING AND
26 ENCOURAGING PEOPLE TO QUIT, AND IN REGULATING SMOKE AS WE
27 MOVE TO LATER IN TIME.
28 AND YOU ALSO MENTIONED THAT WAY BACK IN THE
3904

1 '50S CALIFORNIA WAS ACTUALLY AHEAD OF THE UNITED STATES'
2 NATIONAL NUMBERS IN TERMS OF THE NUMBER OF PEOPLE WHO
3 SMOKE, THE PERCENTAGE OF PEOPLE WHO SMOKE; CORRECT?

4 A. THAT'S CORRECT.

5 Q. LET'S TAKE A LOOK AT NUMBER 53, PLEASE.

6 WHAT DOES THAT SHOW?

7 A. THIS IS A KIND OF A GRAPH THAT SHOWS YOU CAN
8 SEE THE DOWNWARD LINE OF SMOKING. AND I JUST FOUND THIS
9 REALLY INTERESTING, BECAUSE I WAS SO TAKEN WITH THE FACT
10 THAT THE BLUE LINE, WHICH IS INITIALLY HIGHER, IS THE
11 CALIFORNIA RATE, WHERE YOU HAD ABOUT 48 PERCENT OF PEOPLE
12 IN CALIFORNIA WERE SMOKERS.

13 BY THE WAY, I WANT TO POINT OUT THAT'S THE
14 CIVILIAN POPULATION. I THINK PEOPLE KNOW THERE IS A BIG
15 MILITARY PRESENCE IN CALIFORNIA. YOU THINK THAT MIGHT
16 BOOST UP THE NUMBERS, BUT THESE WERE CIVILIANS.

17 SO 48 PERCENT OF CALIFORNIANS WERE SMOKERS
18 COMPARED TO THE PEAK NATIONAL OF 45 PERCENT.

19 Q. SO BACK IN 1958 CALIFORNIANS SMOKED AT A
20 LITTLE HIGHER RATE THAN THE REST OF THE COUNTRY?

21 A. RIGHT. THEN WHAT YOU SEE IS OUR LINE, SO TO
22 SPEAK, DIPS WAY DOWN BELOW THE NATIONAL AVERAGE AND REMAINS
23 STEADILY BELOW THE NATIONAL AVERAGE THROUGH THE PRESENT.

24 Q. AND THIS AGAIN IS DATA FROM THE FEDERAL
25 GOVERNMENT?

26 A. IT'S BOTH DATA FROM THE FEDERAL GOVERNMENT AND
27 FROM GALLUP POLLS EARLY ON. IT'S ALSO INFORMATION FROM THE
28 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, WHICH HAS A TOBACCO
3905

1 CONTROL SECTION.

2 Q. AND HAS HAD FOR MANY YEARS?

3 A. YES. BUT PROPOSITION 99 HAS REALLY MADE THAT
4 A BIG DEAL.

5 Q. THANK YOU, DR. HOFFMAN. I HAVE NO FURTHER
6 QUESTIONS.

7 THE COURT: THANK YOU, MR. LEITER.

8

9 CROSS-EXAMINATION

10 BY MR. PIUZE:

11 Q. DID YOU READ ALL THESE?

12 A. YES, I DID.

13 Q. HOW MANY ARE IN THIS BOX?

14 A. 2,287.

15 Q. HOW LONG DID IT TAKE?

16 A. DAYS AND DAYS. IT TOOK A LONG TIME.

17 Q. HOW LONG?

18 A. PRECISE NUMBER OF HOURS? WELL, EIGHT HOURS IN
19 A DAY, TIMES MAYBE SIX DAYS, SOMETHING LIKE THAT.

20 Q. IT TOOK YOU 50 HOURS TO READ WHAT'S IN THAT
21 BOX?

22 A. PROBABLY. I AM ESTIMATING ON THAT. BUT, YES,

23 IT TOOK A LONG TIME.
24 Q. WHERE DID YOU GET THAT STUFF?
25 A. THESE ARE FROM THE LOS ANGELES TIMES.
26 Q. I KNOW. BUT WHERE DID YOU GET IT?
27 A. WHERE DID I GET IT? I GOT IT FROM MY RESEARCH
28 ASSISTANTS. THE INITIAL CULLING WAS DONE BY THEM, SO THAT
3906
1 I DIDN'T HAVE TO SIT AND TURN THE WHEELS OF THE -- IT'S A
2 MICROFILM PLAYER THAT YOU CAN HAVE THAT YOU CAN GO TO MOST
3 LIBRARIES AND GET IT. WE GOT A LOT OF IT FROM THE LIBRARY
4 OF CONGRESS. WE GOT A LOT OF IT IN SAN DIEGO AS WELL.
5 Q. LET'S JUST STAY WITH THE L.A. TIMES.
6 WHERE DID YOUR RESEARCH ASSISTANTS GET THIS?
7 DID THEY COME UP TO LOS ANGELES AND GET THIS?
8 A. NO. YOU CAN GET THIS THROUGH LIBRARIES.
9 SINCE THE LOS ANGELES TIMES IS A MAJOR NEWSPAPER, THAT'S
10 CARRIED IN MOST LIBRARIES.
11 Q. SO YOUR RESEARCH ASSISTANTS STARTED GOING
12 THROUGH MICROFICHE OF THE LOS ANGELES TIMES, STARTING
13 JANUARY 1, 1950 AND WENT THROUGH EVERY LOS ANGELES TIMES
14 FOR THE NEXT 44 YEARS IN ORDER TO GET THESE DOCUMENTS?
15 A. YES, THAT'S CORRECT. ALTHOUGH IT'S MICROFILM.
16 Q. EXCUSE ME?
17 A. IT MAKES A BIG DIFFERENCE WHEN YOU'RE DOING
18 IT.
19 Q. I'M TECHNOLOGICALLY INEPT.
20 HOW LONG DID IT TAKE TO GO THROUGH 44 YEARS?
21 WATCH THIS; I'M GOOD AT MATH, THOUGH.
22 THE L.A. TIMES PUBLISHES 365 DAYS A YEAR?
23 A. THAT'S CORRECT.
24 Q. FOR 44 YEARS?
25 A. THAT'S RIGHT.
26 Q. HOW MANY NEWSPAPERS?
27 A. YOU'RE TESTING MY MATH. I DON'T KNOW THE
28 NUMBER. I NEED A PIECE OF PAPER.
3907
1 Q. I HAVEN'T DONE THIS IN ADVANCE. BUT I FIGURE
2 IF YOU'VE GOT A PH.D. FROM STANFORD -- HERE (INDICATING).
3 365 TIMES 44.
4 A. GOT A PEN, TOO?
5 Q. SURE. SOMEWHERE.
6 A. MAY I HAVE IT?
7 Q. (INDICATING.)
8 (PAUSE IN PROCEEDINGS.)
9 THE WITNESS: 5,090 IS WHAT I COME UP WITH.
10 Q. BY MR. PIUZE: SO YOUR RESEARCH ASSISTANTS
11 LOOKED AT 5,090 LOS ANGELES TIMES ISSUES FOR YOU?
12 A. THAT'S RIGHT.
13 Q. HOW LONG DID THAT TAKE?
14 A. WEEKS.
15 Q. HOW MANY?
16 A. PROBABLY FOUR TO SIX WEEKS. TOOK A LONG TIME.
17 Q. HOW MANY ASSISTANTS WORKING FOUR TO SIX
18 WEEKS?
19 A. SEVERAL.
20 Q. HOW MANY?
21 A. ABOUT FOUR OR FIVE DIFFERENT TIMES PEOPLE
22 WORKING AT DIFFERENT SPEEDS.
23 Q. FOUR OR FIVE PEOPLE WORKING FOUR TO SIX WEEKS
24 TO GET YOU TO THE STAGE WHERE YOU COULD SPEND ROUGHLY 50
25 HOURS TO REVIEW WHAT THEY'VE GOT?
26 A. WELL, YES. THERE IS, OF COURSE -- IN THE
27 NEWSPAPER THERE ARE LOTS AND LOTS OF PAGES, SO THEY HAD TO

28 READ FAR MANY MORE PAGES THAN I HAD TO READ.

3908

1 Q. I'M NOT SAYING THEY WENT TOO SLOW. I'M JUST

2 TRYING TO GET SOME PARAMETERS ON THIS.

3 FOUR OR FIVE PEOPLE, WORKING FOUR TO SIX WEEKS

4 TO GET YOU TO WHERE YOU COULD SPEND 50 HOURS TO REVIEW THIS

5 MATERIAL?

6 A. THAT SOUNDS RIGHT.

7 Q. WHERE DID THESE RESEARCH ASSISTANTS COME

8 FROM?

9 A. THEY CAME FROM DIFFERENT PLACES. ONE OF THE

10 RESEARCH ASSISTANTS I HAD -- ACTUALLY, A FEW OF THEM ARE

11 FROM SAN DIEGO. PEOPLE I KNOW WHO ARE IN THE MASTER'S

12 DEGREE PROGRAM AT SAN DIEGO STATE UNIVERSITY.

13 I ALSO ASKED THE LAW FIRM THAT HAD ORIGINALLY

14 ASKED ME TO DO THIS RESEARCH IF THEY COULD GET ME SOME HELP

15 AT THE LIBRARY OF CONGRESS. THE LIBRARY OF CONGRESS HAS

16 WHAT THEY CALL THE ADDITION OF RECORD, WHICH IS VERY

17 IMPORTANT TO MAKE SURE YOU'RE GETTING WHAT IS CONSIDERED

18 THE FINAL COMPLETE EDITION.

19 Q. ARE WE STILL TALKING ABOUT THE L.A. TIMES

20 ONLY, NOW, RIGHT?

21 A. OH, YES.

22 Q. SO YOU HAD PEOPLE WORKING IN WASHINGTON, D.C.,

23 LOOKING AT THE L.A. TIMES?

24 A. THAT'S RIGHT.

25 Q. NOW, THIS WASN'T AN ACADEMIC PROJECT YOU WERE

26 DOING, WAS IT?

27 A. WHAT DO YOU MEAN BY THAT?

28 Q. I MEAN, THIS WASN'T AN ACADEMIC RESEARCH

3909

1 PROJECT THAT YOU WERE DOING, AND YOU WERE GOING TO USE IT

2 IN YOUR COURSES OR TO PUBLISH A BOOK OR A PAPER DOWN AT

3 SAN DIEGO STATE?

4 A. ACTUALLY, IT'S VERY INTERESTING FOR ME IN

5 TERMS OF EXPANDING MY KNOWLEDGE. PART OF WHAT HISTORIANS

6 DO AS YOU RESEARCH DIFFERENT PROJECTS, IS THAT YOU BROADEN

7 OUT THE UNIVERSE OF KNOWLEDGE THAT YOU HAVE.

8 I SPOKE AT THE BEGINNING ABOUT A CLEAN SLATE,

9 HOW YOU COME INTO EVERY PROJECT AFRESH AND LOOKING AT IT,

10 BUT YOU BRING WITH IT A BROAD UNIVERSE OF STUFF THAT YOU

11 KNOW.

12 AND SO FOR ME THIS HAS CONTRIBUTED VERY MUCH

13 TO THAT UNIVERSE OF THINGS THAT I KNOW ABOUT AMERICAN

14 REFORM, AMERICAN REFORM MOVEMENT, IN PARTICULAR, TO SOME

15 EXTENT, AMERICAN BUSINESS, MORE OF AN EMPHASIS ON POPULAR

16 CULTURE. I HAVE KNOWN A LOT MORE ABOUT SMOKING IN THE

17 1920'S, FOR EXAMPLE, AS I USED IN MY MOST RECENT BOOK.

18 THAT'S WHERE I WAS HAVING A HARD TIME WITH THE WORD

19 "ACADEMIC PROJECT."

20 IT IS AN ACADEMIC PROJECT FOR ME. IT'S A

21 RESEARCH PROJECT, AND IN THAT RESPECT CONTRIBUTES TO MY

22 TEACHING. IT CONTRIBUTES TO MY GENERAL KNOWLEDGE AS A

23 HISTORIAN.

24 Q. I DON'T THINK THAT'S WHAT I ASKED.

25 DID YOU UNDERTAKE THIS AS AN ACADEMIC PROJECT

26 HAVING TO DO WITH YOUR PROFESSION AS A TEACHER THERE AT

27 SAN DIEGO STATE, OR DID YOU DO IT FOR A DIFFERENT REASON?

28 A. HONESTLY, I FEEL THAT I ANSWERED THAT BECAUSE

3910

1 THAT IS WHAT AN ACADEMIC DOES. THAT'S WHAT A RESEARCHER

2 DOES.

3 A HISTORIAN TAKES ON NEW PROJECTS OF DIFFERENT

4 TYPES THAT COME YOUR WAY, THAT YOU SAY, YES, I HAVE TIME
5 FOR THIS ONE; NO, I DON'T HAVE TIME FOR THIS ONE; I THINK
6 THIS ONE IS MORE IMPORTANT THAN ANOTHER.
7 SO FOR ME IT IS PART OF MY JOB AS A HISTORIAN.
8 Q. FAIR ENOUGH.
9 DO YOU SOMETIMES GET GRANTS FROM DIFFERENT
10 ORGANIZATIONS IN ORDER TO HELP FUND YOUR RESEARCH?
11 A. OCCASIONALLY I DO.
12 Q. SUCH AS?
13 A. WELL, I GOT A RESEARCH FELLOWSHIP FROM THE
14 WOODROW WILSON CENTER FOR INTERNATIONAL CENTER FOR SCHOLARS
15 IN WASHINGTON, D.C., A FEW YEARS BACK. AND THAT'S AN
16 INTERNATIONAL RESEARCH CENTER, THE SMITHSONIAN INSTITUTION.
17 SO THAT WAS VERY IMPORTANT TO ME IN WRITING THE BOOK BEFORE
18 LAST, THE BOOK ON THE HISTORY OF THE PEACE CORPS. SO
19 THAT'S ONE, AND THERE ARE OTHERS AS WELL.
20 Q. WHY DON'T YOU JUST GIVE ME THE NAMES. I DON'T
21 NEED AN EXPLANATION NOW, JUST GIVE ME THE NAMES SO WE GET A
22 FLAVOR WHO HAS UNDERWRITTEN YOUR RESEARCH.
23 A. I'VE GOTTEN GRANTS FROM THE ORGANIZATION OF
24 AMERICAN STATES IN WASHINGTON. I'VE GOTTEN GRANTS FROM THE
25 AMERICAN PHILOSOPHICAL SOCIETY, WHICH IN PHILADELPHIA WAS
26 STARTED BY BENJAMIN FRANKLIN.
27 I'VE GOTTEN GRANTS FROM THE JOHN KENNEDY
28 LIBRARY AND THE LYNDON JOHNSON LIBRARY.
3911

1 I'VE GOTTEN GRANTS FROM -- I'VE GOTTEN SPECIAL
2 COMPETITIVE GRANTS THAT YOU APPLY FOR FROM UNIVERSITIES AND
3 PRIVATE FOUNDATIONS, ONE OF WHICH WAS HERE IN LOS ANGELES,
4 THE MORE RECENT ONE.
5 SO THAT'S KIND OF A LIST OFF THE TOP.
6 Q. BEFORE I GO ON TO WHERE I'VE GOTTEN, HAVE YOU
7 EVER BEEN TO THE LYNDON JOHNSON LIBRARY?
8 A. HAVE I BEEN TO THE LYNDON JOHNSON LIBRARY?
9 OH, YES, TWO OR THREE TIMES.
10 Q. IT'S RIGHT ACROSS THE STREET FROM THE
11 UNIVERSITY OF TEXAS LAW SCHOOL?
12 A. I DON'T KNOW IF IT'S ACROSS FROM U.T. LAW
13 SCHOOL. I WOULDN'T KNOW THE LAW SCHOOL.
14 IT'S ACROSS FROM THE LYNDON JOHNSON CENTER FOR
15 GOVERNMENT. IT'S LIKE THE POLITICAL SCIENCE DEPARTMENT AND
16 GOVERNMENT CENTER.
17 Q. WHO DID YOU GET YOUR GRANT FROM TO DO THIS
18 PROJECT?
19 A. TO DO THE PROJECT I'M WORKING ON RIGHT NOW?
20 Q. YES.
21 A. THIS WAS NOT A GRANT. THIS WAS RESEARCH WHERE
22 I WAS HIRED TO DO RESEARCH AND PAID FOR DOING THE RESEARCH
23 THAT I DID, WHICH IS DIFFERENT FROM A GRANT.
24 Q. WHO PAID YOU TO DO THE RESEARCH?
25 A. I WAS PAID TO DO THE RESEARCH ON THIS CASE BY
26 THE LAW FIRM THAT MR. LEITER WORKS FOR.
27 Q. WHAT ABOUT YOUR RESEARCH ASSISTANTS, THE FOUR
28 OR FIVE OF THEM WHO WERE DOWN THERE FOR FOUR TO SIX WEEKS,
3912

1 HOW WERE THEY PAID?
2 A. THEY WERE ALSO PAID BY THE ATTORNEYS.
3 Q. YOU MENTIONED SOMETHING EARLIER ABOUT
4 WASHINGTON, D.C., AND SOME ATTORNEYS WHO CONTACTED YOU
5 ORIGINALLY. WHAT'S THAT ABOUT?
6 A. WELL, THIS WAS A FIRM THAT CONTACTED ME TO ASK
7 ME IF I WAS INTERESTED IN DOING THIS KIND OF RESEARCH, IF I
8 WOULD HAVE THE TIME, IF IT WAS SOMETHING I FELT WOULD BE OF

9 INTEREST TO ME.
10 SO THEY CONTACTED ME ABOUT A YEAR AND A HALF
11 AGO, WHICH IS WHEN I STARTED THIS PROJECT.
12 Q. THAT'S NOT MR. LEITER'S LAW FIRM?
13 A. NO, IT'S NOT. IT'S ANOTHER LAW FIRM IN
14 WASHINGTON, D.C.
15 Q. ONE OF THEIR REPRESENTATIVES IS HERE TO WATCH
16 YOU; RIGHT?
17 A. YES. YES, SHE IS.
18 Q. ONE OF THEIR REPRESENTATIVES WAS THERE TO
19 WATCH YOU GIVE A DEPOSITION?
20 A. YES, SHE WAS.
21 Q. ONE OF THEIR REPRESENTATIVES WAS THERE WHEN
22 YOU WENT BACK TO WASHINGTON, D.C., THREE TIMES TO HELP DO
23 SOME OF THE RESEARCH THAT YOU'RE TESTIFYING ABOUT TODAY?
24 A. OH, SOMETIMES THEY WERE, AND SOMETIMES THEY
25 WERE NOT.
26 Q. DO YOU THINK THAT TOBACCO CAUSES DISEASE?
27 A. WELL, I COUNT MYSELF AS A MEMBER OF THE
28 GENERAL PUBLIC, AND, YES, COMMON KNOWLEDGE, CERTAINLY SINCE
3913
1 I WAS SECOND OR THIRD GRADE, IS THAT YOU CAN'T SMOKE
2 CIGARETTES BECAUSE THEY CAN KILL YOU.
3 Q. THAT'S A "YES"?
4 A. YES.
5 Q. DO YOU THINK THAT ANYONE WHO DOESN'T KNOW THAT
6 TOBACCO CAUSES DISEASE IS DEVELOPMENTALLY DISABLED?
7 MR. LEITER: OBJECTION. IT'S OUTSIDE THE SCOPE OF
8 HER EXPERTISE.
9 THE COURT: OVERRULED.
10 MR. LEITER: OKAY.
11 THE WITNESS: THAT MEANS I SHOULD ANSWER IT, YOUR
12 HONOR?
13 MR. LEITER: YES.
14 THE COURT: YES, MA'AM.
15 MR. LEITER WON'T INSTRUCT YOU TO ANSWER; I
16 WILL.
17 ANSWER THE QUESTION.
18 THE WITNESS: THANK YOU. I'M SORRY. I DON'T KNOW
19 THIS ETIQUETTE.
20 NO, I THINK -- FOR EXAMPLE, THERE ARE PEOPLE
21 WHO ARE DEVELOPMENTALLY DISABLED WHO WOULD KNOW THE
22 INFORMATION. BUT I DO THINK THAT PERSONS OF NORMAL
23 INTELLIGENCE ARE GOING TO KNOW WHAT IS KNOWN WITHIN THEIR
24 SOCIETY.
25 Q. BY MR. PIUZE: DO YOU BELIEVE THAT -- IF THERE
26 IS A PARTICULAR SEGMENT OF THE POPULATION THAT IS NOT AWARE
27 OF THE RISKS IN SMOKING, THE RISKS AND HAZARDS OF SMOKING,
28 THAT IT WOULD ONLY BE PEOPLE WHO ARE DEVELOPMENTALLY
3914
1 DISABLED, MAY NOT BE AWARE OF THE DANGERS, OR LESS LIKELY
2 TO BE AWARE OF THE DANGERS? AND HONESTLY, THAT'S ABOUT THE
3 ONLY GROUP THAT I COULD THINK OF THAT WOULD NOT BE.
4 DO YOU AGREE WITH THAT?
5 A. WELL, YES, BECAUSE I SAID THAT.
6 Q. ALL RIGHT.
7 WHICH GETS ME BACK TO WHERE I WAS. CERTAINLY
8 IT'S YOUR VIEW THAT FOR A CERTAIN AMOUNT OF TIME THAT'S
9 GONE BY NOW IN THE ADULT POPULATION, ONLY DEVELOPMENTALLY
10 DISABLED PEOPLE, AND NOT EVEN ALL OF THEM, COULD FAIL TO
11 KNOW THAT CIGARETTE SMOKING WAS VERY HARMFUL TO THEM, OKAY?
12 A. YES. AS I TOLD YOUR REPRESENTATIVE WHO WAS
13 TAKING THAT DEPOSITION AND HE WAS ASKING ME, CAN YOU THINK

14 OF ANYBODY WHO WOULDN'T KNOW, WHO WOULDN'T HAVE THIS COMMON
15 KNOWLEDGE AND SEEN T.V. AND READ NEWSPAPERS AND SEEN
16 BILLBOARDS AND THINGS AT BUS STOPS.
17 AND I WAS TRYING TO THINK OF WHO WOULDN'T.
18 AND REALLY THE ONLY ANSWER I COULD COME UP WITH IS SOMEBODY
19 WHO I THINK REALLY DOESN'T HAVE THE MENTAL CAPACITY TO
20 RECOGNIZE INFORMATION OR TO REMEMBER IT, YOU KNOW, MAYBE
21 SOMEBODY WHO LIVES ON A DESERT ISLAND SOMEPLACE, IN A CAVE,
22 WOULDN'T KNOW. THERE AREN'T THOSE PEOPLE REALLY.
23 THAT'S THE BEST I CAN DO WITH THINKING OF WHO
24 WOULD BE OUTSIDE THE FRAMEWORK OF COMMON KNOWLEDGE.
25 I THINK COMMON KNOWLEDGE IS LIKE DON'T PUT
26 YOUR FINGER IN THE LIGHT SOCKET. YOU NEED TO KNOW HOW TO
27 READ TO GET BY IN MODERN SOCIETY.
28 I WAS TRYING TO THINK OF WHO WOULDN'T KNOW
3915

1 THOSE THINGS. I THINK IT'S PEOPLE UNFORTUNATELY WHO DON'T
2 HAVE THE ABILITY TO KNOW THOSE THINGS.
3 Q. DO YOU THINK THAT CIGARETTE SMOKING KILLS
4 PEOPLE?
5 A. YEAH, I THINK IT GIVES THEM LUNG CANCER, SO IT
6 KILLS THEM IF THEY DIE OF IT.
7 Q. WE'VE HEARD HERE MANY, MANY TIMES FROM SUPER
8 SMART PEOPLE LUNG CANCER IS A FATAL DISEASE.
9 SO YOU THINK CIGARETTE SMOKING CAUSES LUNG
10 CANCER?
11 A. WELL, I'M NOT A DOCTOR SO I JUST TAKE WHAT
12 I'VE ALWAYS HEARD, WHICH IS THAT IT DOES. SO DO I KNOW HOW
13 TO EXPLAIN IT AS A PHYSICIAN? NO, I WOULDN'T.
14 Q. I'M NOT CHALLENGING YOU ON THAT. I'M WITH
15 YOU. I'M NOT AGAINST YOU, I'M WITH YOU ON THIS POINT.
16 I WANT TO READ YOU SOMETHING.
17 "IN 1997" -- EXCUSE ME --
18 "1998, IN MARCH, IN MINNESOTA, HOW
19 MANY PEOPLE WOULD HAVE TO DIE FROM
20 SMOKING BEFORE YOU WOULD REASSESS
21 YOUR DUTIES? ONE, A HUNDRED, 5,000?
22 HOW MANY, SIR?
23 "ANSWER: WELL, I DON'T KNOW
24 THAT ANYONE DOES. SO I'M FINDING
25 THAT A HARD ASSUMPTION TO MAKE."
26 SO I WANT TO JUST STOP THERE. IN 1998, IN
27 MARCH, IN MINNESOTA, FOR AN ADULT IN OUR SOCIETY TO SAY
28 THAT HE DIDN'T KNOW THAT ANYONE DIES FROM SMOKING, DO YOU
3916

1 THINK THAT PERSON WOULD HAVE TO BE DEVELOPMENTALLY
2 DISABLED?
3 A. WELL, I THINK I CAN SEE FROM YOUR TRANSCRIPT
4 THAT IT'S MR. BIBLE OR SOMETHING. IT SAYS IT RIGHT THERE.
5 I DON'T KNOW THAT HE IS DEVELOPMENTALLY
6 DISABLED, AND I CERTAINLY HAVE NEVER HEARD THAT, BUT I
7 THINK THAT HE IS OBVIOUSLY DOWNPLAYING IT. AND THAT WAS
8 THE CHARACTER OF WHAT WAS SAID.
9 Q. THAT'S NOT MY QUESTION, RESPECTFULLY.
10 A. YES. DO I THINK HE IS DEVELOPMENTALLY
11 DISABLED? I DON'T THINK SO.
12 Q. I DIDN'T TELL YOU IT'S MR. BIBLE. HOW CAN YOU
13 SEE -- WHAT DO YOU SEE?
14 A. IT SAYS IN RED IN BIG LETTERS ON ONE SIDE OF
15 THE PAGE.
16 Q. DO YOU KNOW WHO HE IS?
17 A. HE WAS, I THINK, THE CHIEF EXECUTIVE OF PHILIP
18 MORRIS.

19 Q. HOW DO YOU KNOW THAT?
20 A. READING.
21 Q. WHEN DID THAT END?
22 A. WHEN DID HE -- I DON'T KNOW.
23 Q. HE IS TODAY --
24 A. VERY LIKELY.
25 Q. -- RIGHT NOW.
26 YOU KNOW WHAT MARKETING IS, DON'T YOU?
27 A. YES, I DO.
28 Q. WHAT'S MARKETING?
3917
1 A. IT'S SELLING THINGS.
2 Q. PHILIP MORRIS CORPORATION, IS IT THE LARGEST
3 MARKETER IN THE WORLD?
4 A. I BELIEVE WITH THEIR SELLING KRAFT FOODS AND
5 STUFF LIKE THAT, THAT IT IS. I DON'T KNOW THAT FOR A FACT.
6 Q. ANYWAY, WHETHER IT'S FIRST, SECOND, THIRD,
7 VERY ADEPT AT MARKETING IDEAS TO THE POPULACE; RIGHT?
8 A. I THINK THEY MARKET GOODS, SIR, NOT IDEAS.
9 Q. YOU DO. OKAY.
10 SO ANYWAY, WHEN MR. BIBLE, IN MARCH OF 1998,
11 IN MINNESOTA, SAID THAT HE DIDN'T KNOW THAT ANYONE DIED
12 FROM SMOKING, IF YOU DON'T THINK HE IS DEVELOPMENTALLY
13 DISABLED, WHY DO YOU THINK HE SAID THAT?
14 MR. LEITER: OBJECTION, CALLS FOR SPECULATION.
15 THE COURT: OVERRULED.
16 THE WITNESS: ANSWER IT?
17 THE COURT: DO YOU HAVE AN ANSWER?
18 THE WITNESS: WELL, HONESTLY YOU'RE ASKING ME WHY DID
19 HE SAY THAT. AND I DON'T FEEL I CAN SEE INTO HIS MIND AND
20 KNOW WHAT HE WAS THINKING AT THE MOMENT HE SAID THAT. I
21 DON'T KNOW.
22 Q. BY MR. PIUZE: THAT'S FINE. I WON'T PUSH
23 YOU.
24 I WANTED TO READ A LITTLE MORE, NOT MUCH.
25 (READING:)
26 "HOW MANY WOULD HAVE TO DIE
27 FROM YOUR PRODUCTS BEFORE YOU'D
28 REASSESS YOUR DUTY?
3918
1 "ANSWER: I WOULD HAVE
2 THOUGHT IF YOU'RE FORCING ME TO SAY
3 THAT SOMEBODY -- I WOULD HAVE TO
4 ASSUME SOMEBODY DIED. IF ONE PERSON
5 DIED, I WOULD REASSESS MY DUTIES.
6 "QUESTION: SO IF ONE PERSON
7 DIED FROM SMOKING YOU WOULD REASSESS
8 YOUR DUTIES; IS THAT CORRECT?
9 "ANSWER: YES, I'D REASSESS
10 MY DUTIES. I WOULD LOOK AT ALL OF
11 MY DUTIES, YES.
12 "QUESTION: WOULD YOU SHUT
13 DOWN THE BUSINESS IF ONE PERSON
14 DIED?
15 "ANSWER: YES. WELL, THAT'S
16 A QUESTION THAT HAS ACTUALLY BEEN
17 ASKED ME BEFORE PUBLICLY IN A
18 DEPOSITION AND I HAD SAID AT THAT
19 TIME PERHAPS I WOULD."
20 NOW, I'M GOING TO CONFESS I'M ENDING IN THE
21 MIDDLE OF HIS ANSWER WHERE HE BACKS AWAY FROM THAT, BUT
22 THAT'S WHERE I CHOOSE TO END.
23 (READING:)

24 "YES, I WOULD SHUT DOWN MY
25 BUSINESS IF ONE PERSON DIED. THAT
26 QUESTION WAS ASKED TO ME BEFORE
27 PUBLICLY IN A DEPOSITION, AND I SAID
28 AT THAT TIME, YES, I WOULD SHUT DOWN
3919
1 MY BUSINESS IF ONE PERSON DIED."
2 DO YOU BELIEVE THAT?
3 MR. LEITER: OBJECTION, RELEVANCE TO THIS WITNESS.
4 ARGUMENTATIVE.
5 THE COURT: SUSTAINED.
6 Q. BY MR. PIUZE: DO PEOPLE IN THE COUNTRY HAVE A
7 RIGHT TO LISTEN TO THE LEADERS OF BUSINESS IN THIS
8 COUNTRY?
9 A. I THINK THE RIGHT IS NOT TO LISTEN; IT'S THE
10 RIGHT TO FREE SPEECH, IS WHAT YOU WOULD BE REFERRING TO,
11 THAT THE BUSINESS LEADERS HAVE A RIGHT LIKE ANYBODY UNDER
12 THE FIRST AMENDMENT TO SPEAK.
13 Q. IT'S NOT WHAT I'M REFERRING TO. BELIEVE ME, I
14 KNOW THERE IS A FIRST AMENDMENT. LOOK AT THAT FLAG; HERE
15 WE ARE. HE CAN SAY WHATEVER HE WANTS.
16 THAT'S NOT WHAT I ASKED. WHAT I ASKED IS IN
17 THE AUDIENCE, SOMEONE IN THE AUDIENCE TO LISTEN TO THIS MAN
18 WHO IS THE HEAD OF PERHAPS THE LARGEST MARKETING
19 CORPORATION IN THE WORLD, WHO SAYS SOMETHING UNDER OATH.
20 MR. LEITER: I OBJECT; THIS IS ARGUMENTATIVE.
21 MR. PIUZE: I'M SIMPLY ASKING.
22 THE COURT: SUSTAINED.
23 Q. BY MR. PIUZE: DO YOU THINK MR. BOEKEN WAS
24 STUPID TO LISTEN TO WHAT PHILIP MORRIS TOLD HIM OVER THE
25 YEARS?
26 MR. LEITER: OBJECTION, IT'S ARGUMENTATIVE.
27 THE COURT: OVERRULED.
28 ANSWER.
3920
1 THE WITNESS: I'M SORRY?
2 DO I THINK HE WAS STUPID --
3 Q. BY MR. PIUZE: THAT'S NOT THE WHOLE QUESTION.
4 A. -- TO LISTEN TO PHILIP MORRIS OVER THE YEARS?
5 Q. DO YOU THINK HE WAS STUPID TO BELIEVE WHAT
6 PHILIP MORRIS TOLD HIM OVER THE YEARS?
7 A. I FIND IT VERY, VERY HARD TO BELIEVE THAT HE
8 DID BELIEVE THEM.
9 Q. OKAY.
10 DO YOU BELIEVE THAT ANYONE IN THE COUNTRY OF
11 ADULT AGE WOULD BE STUPID TO LISTEN TO THE CHIEF EXECUTIVE
12 OFFICER OF THE COMPANY I'M SUING, TESTIFY UNDER OATH?
13 MR. LEITER: OBJECTION, IT'S ARGUMENTATIVE, AND IT
14 CALLS FOR SPECULATION.
15 THE COURT: GIVEN WHAT YOU'VE TESTIFIED TO EARLIER,
16 OVERRULED.
17 THE WITNESS: WELL, I THINK YOU WERE SAYING -- THAT
18 QUOTE WAS FROM 1998, BY THE WAY, WHICH IS OUTSIDE THE
19 PERIOD THAT I'VE BEEN LOOKING AT.
20 BUT I THINK THAT PEOPLE WEREN'T LISTENING.
21 THEY WERE TUNING IT OUT. IN FACT, QUITE DRAMATICALLY. YOU
22 CAN SEE THAT, HOW NEWSPAPERS WERE TUNING IT OUT, THE PUBLIC
23 WAS TUNING IT OUT. THERE WAS -- AND ESPECIALLY AS WE GO
24 ALONG, A REAL COLLECTIVE REJECTION OF WHAT THESE FOLKS WERE
25 SAYING.
26 Q. BY MR. PIUZE: I WASN'T TALKING ABOUT 1998. I
27 WAS TALKING ABOUT 1994.
28 (COUNSEL CONFERRED SOTTO VOCE.)

3921

1 Q. BY MR. PIUZE: APRIL, IF I REMEMBER
2 CORRECTLY, APRIL 15TH -- I MAY BE WRONG -- 1994, UNDER
3 OATH, PENALTY OF PERJURY, UNITED STATES CONGRESS.
4 (A VIDEOTAPE WAS PLAYED AND NOT REPORTED
5 PER STIPULATION OF COUNSEL.)
6 Q. BY MR. PIUZE: SO THE PERIOD OF TIME YOU WERE
7 DEALING WITH INCLUDED 1994; RIGHT?
8 A. YES. BUT I THOUGHT YOU WERE REFERRING TO THAT
9 EARLIER THING YOU WERE READING.
10 Q. OKAY. I'M NOT.
11 SO NOW THAT WE SQUARED THAT AWAY, IN 1994, TWO
12 MONTHS BEFORE MR. BOEKEN'S MOM DIED OF CANCER, AT WHICH
13 TIME HE THEN SAID FOR SURE NOW I KNOW; TWO MONTHS BEFORE
14 THAT HAPPENED, WHEN A PERSON IN A RESPONSIBLE -- LET'S STOP
15 FOR A SECOND.
16 IN OUR SOCIETY NOW, GOOD OR BAD, RIGHT OR
17 WRONG, ARE WE SUPPOSED TO LOOK UP TO THE HEADS OF MAJOR
18 BUSINESS ORGANIZATIONS?
19 A. I DON'T THINK THEY ARE CONSIDERED THE MORAL
20 LEADERS OF OUR SOCIETY.
21 Q. IS THAT A "NO"?
22 A. IS THAT ENOUGH?
23 Q. IS THAT A "NO"?
24 A. NO.
25 Q. BECAUSE I'M NOT TALKING ABOUT MORAL LEADERS.
26 I WOULDN'T EVEN THINK ABOUT DOING THAT FOR A SECOND.
27 ARE WE SUPPOSED TO LISTEN TO WHAT SOMEONE WHO
28 IS THE HEAD OF ONE OF THE LARGEST CORPORATIONS IN THE WORLD
3922

1 SAYS UNDER OATH HERE IN THIS COUNTRY AS OF 1994?
2 MR. LEITER: VAGUE AND ARGUMENTATIVE.
3 THE COURT: OVERRULED. SHE DID TESTIFY AS TO PUBLIC
4 ATTITUDES AS TO CORPORATIONS AND THE CHANGE OVER THE
5 YEARS.
6 OVERRULED.
7 THE WITNESS: I DON'T THINK THAT WE ARE SUPPOSED TO
8 LISTEN, SO THAT'S A NO.
9 I THINK SOME PEOPLE DO LISTEN, AND NOTED JUST
10 NOW THAT WAS ON C-SPAN. AND I READ THAT TESTIMONY. I HAVE
11 NOT SEEN IT.
12 I KNOW THAT MR. WAXMAN IS ABOVE MR. CAMPBELL
13 AND LECTURING DOWN TO HIM. IF I HAD BEEN WATCHING THAT ON
14 C-SPAN AS IT WAS BEING PLAYED, MY TAKE AWAY ON THAT WOULD
15 HAVE BEEN THAT WAXMAN WAS EXCORIATING HIM, THAT HE WAS
16 SAYING, I CAN'T BELIEVE YOU DON'T BELIEVE THIS. THIS IS
17 RIDICULOUS.
18 HE WAS KIND OF GIVING THEM A PUBLIC TALKING
19 TO. THAT'S WHAT I WOULD HAVE TAKEN AWAY FROM WHAT THAT
20 EXECUTIVE WAS SAYING.
21 Q. BY MR. PIUZE: FIRST OF ALL, IT'S OBVIOUS TO
22 EVERYONE, WAXMAN WAS -- IT'S ALMOST KIND OF LAUGHABLE
23 NOW -- PROBABLY DIDN'T HIT HIM HARD ENOUGH.
24 MR. LEITER: OBJECTION.
25 THE COURT: SUSTAINED.
26 MR. PIUZE: I APOLOGIZE.
27 Q. IT'S OBVIOUS WAXMAN WAS TRYING TO WHAP HIM
28 AROUND, BUT THAT'S NOT WHAT I ASKED.

3923

1 WHAT I ASKED WAS, AS OF 1994, CITIZENS OF OUR
2 COUNTRY, ADULT CITIZENS OF THIS COUNTRY, LISTENING TO ONE
3 OF THE HEADS OF THE LARGEST BUSINESS ENTERPRISES IN THE
4 WORLD SPEAK, IS THAT THE KIND OF PERSON THAT YOU THINK WE

5 SHOULD BE LISTENING TO?
6 A. DO I PERSONALLY BELIEVE I SHOULD GO FOR MY
7 INFORMATION TO THAT SORT OF PERSON?
8 Q. NO. YOU KNOW, I APOLOGIZE, BUT YOUR PERSONAL
9 FEELINGS, WITH ALL DUE RESPECT -- I DON'T MEAN THIS IN A
10 NEGATIVE WAY -- AREN'T PART OF THE TRIAL. YOU'RE UP THERE
11 AS AN EXPERT WITNESS, EXPERT HISTORIAN. YOU KNOW ALL ABOUT
12 AMERICAN HISTORY.
13 I'M POINTING OUT TO YOU THAT THIS GUY'S THE
14 HEAD OF ONE OF THE LARGEST BUSINESS ENTERPRISES IN THE
15 WORLD, HE IS SAYING SOMETHING IN 1994. I'M SIMPLY ASKING,
16 DO OUR CITIZENS HAVE A RIGHT TO LISTEN TO WHAT HE IS
17 SAYING?
18 A. YES, THEY HAVE A LEGAL RIGHT TO LISTEN. I
19 THINK THAT THEY DID NOT BELIEVE IT AT ALL, HOWEVER, AND
20 THIS WAS IMMEDIATELY TAKEN AND PUT ON THE AIRWAVES TO SHOW
21 IN PROPOSITION 99 FUNDS. IT WAS WITHIN FOUR MONTHS THAT
22 WAS ON THE T.V. AND EVERYBODY WAS BEING ASKED, DO THEY
23 THINK WE'RE STUPID?
24 SO THEY HAVE A RIGHT TO LISTEN, BUT I THINK
25 OVERWHELMINGLY THEY DIDN'T BELIEVE IT.
26 Q. YOU'VE ANSWERED MY QUESTION, PLUS ABOUT 99
27 OTHERS THAT I MAY OR MAY NOT HAVE ASKED. I DIDN'T ASK
28 ABOUT A LEGAL RIGHT. AGAIN, OBVIOUSLY, WE HAVE A LEGAL
3924
1 RIGHT TO LISTEN. WE KNOW IN AMERICA WE HAVE A LEGAL RIGHT
2 TO LISTEN.
3 AS A HISTORIAN HAVE THINGS GOTTEN SO OUT OF
4 HAND THAT THE POPULOUS SHOULD LISTEN TO THE HEAD OF ONE OF
5 THE LARGEST CORPORATIONS IN THE WORLD AND JUST SAY, THAT
6 GUY IS A LYING SACK? IS THAT HOW FAR IT'S GONE?
7 MR. LEITER: OBJECTION, ARGUMENTATIVE.
8 THE COURT: OVERRULED. IS THAT WHERE WE ARE
9 HISTORICALLY?
10 THE WITNESS: I THINK THAT IS WHERE WE ARE
11 HISTORICALLY WITH THIS CORPORATION, THAT HISTORICALLY
12 PEOPLE, AS THE L.A. TIMES PEOPLE PUT IT, THEY WIDELY
13 DERIDED WHAT WAS SAID. THEY THOUGHT THESE WERE THE BAD
14 GUYS IN THE MOVIE, AND SO, YES, I BELIEVE THAT.
15 I'M SORRY, YOUR QUESTIONS, HONESTLY, ARE NOT
16 PHRASED IN A WAY WHICH I FIND THEM CLEAR. SO I'M TRYING MY
17 VERY BEST TO ANSWER IT FULLY.
18 Q. BY MR. PIUZE: I'M NOT AN ACADEMIC, BUT I DID
19 BUY THE L.A. TIMES TODAY. IN SECTION "E" -- HAVE YOU SEEN
20 THIS?
21 A. I SAW THE FRONT COVER. I'VE BEEN HERE ALL
22 DAY. I HAVEN'T HAD A CHANCE TO READ THE LIVING SECTION.
23 Q. WHEN IS THE LAST TIME YOU READ A
24 SMOKING-RELATED TOBACCO-RELATED ARTICLE IN THE L.A. TIMES?
25 A. I THINK YESTERDAY.
26 Q. WHAT WAS IT?
27 A. I'M TRYING TO REMEMBER WHAT THAT ONE WAS
28 ABOUT. I JUST CAN'T REMEMBER WHAT IT WAS ABOUT. THERE WAS
3925
1 SOMETHING IN THERE YESTERDAY, AND I WENT, OH, WHAT DO YOU
2 KNOW, THERE IT IS.
3 Q. EVEN THOUGH YOU READ IT YESTERDAY ON TOBACCO,
4 YOU'RE HERE TO TESTIFY ON TOBACCO, YOU DON'T KNOW WHAT IT
5 SAID?
6 A. I DON'T REMEMBER THE PARTICULAR ARTICLE.
7 Q. THERE IS ACTUALLY ONE IN THE NEWSPAPER TODAY.
8 I'M GOING TO DISCUSS IT WITH YOU A LITTLE LATER.
9 HERE IS WHY I PULLED OUT THE L.A. TIMES NOW.

10 THIS IS SECTION "E," THE LIVING SECTION, RIGHT FROM TODAY'S
11 NEWSPAPER.

12 AND THE LEAD STORY SAYS WHAT? JUST READ THE
13 HEADLINE.

14 A. THE LEAD STORY HERE, THE HEADLINE HERE, IT
15 SAYS, "WHAT'S HAPPENED TO AMERICA'S MORAL CLIMATE?"

16 Q. NOW, READ THE NEXT SUBHEAD RIGHT UNDER IT.

17 A. IT SAYS, "SCHOLARS AND OTHER THINKERS PONDER
18 WHETHER PEOPLE KNOW RIGHT FROM WRONG AND CAN RESHAPE A
19 SHARED MORAL CENTER."

20 Q. DO YOU THINK -- I'M GOING TO FEED YOU TWO EASY
21 ONES. NUMBER ONE, IT'S GOOD TO KNOW RIGHT FROM WRONG,
22 ISN'T IT?

23 A. I BELIEVE SO.

24 Q. IT'S GOOD TO HAVE A MORAL CENTER IN THIS
25 COUNTRY, ISN'T IT?

26 A. I BELIEVE SO.

27 Q. DO YOU THINK THERE IS ANY TRICKLE-DOWN EFFECT
28 INTO THE POPULATION WHEN THE PRESIDENT OF ONE OF THE
3926

1 LARGEST CORPORATIONS IN THE WORLD, BY YOUR OWN RECKONING,
2 SHOULDN'T BE TRUSTED, SHOULDN'T BE BELIEVED, AND WHAT HE
3 SAID SHOULD NOT EVEN BE TAKEN AT FACE VALUE?

4 HOW DOES THAT CONTRIBUTE TO THE MORAL CLIMATE
5 OF OUR COUNTRY TODAY?

6 A. I THINK IT'S LIKE PRESIDENT CLINTON'S PROBLEMS
7 A COUPLE OF YEARS AGO. IT'S NOT GOOD. IT'S NOT GOOD.

8 Q. PRESIDENT CLINTON'S PROBLEMS FROM A COUPLE OF
9 YEARS AGO DIDN'T KILL 400,000 PEOPLE A YEAR, DID IT?

10 MR. LEITER: OBJECTION. WE'RE IN ARGUMENT.

11 THE COURT: SUSTAINED.

12 MR. PIUZE: I CAN KEEP GOING. IT'S ALMOST 3:00
13 O'CLOCK STRAIGHT UP.

14 IS THERE ANYTHING YOU WANTED TO DO, YOUR
15 HONOR?

16 THE COURT: THANK YOU.

17 LET'S TAKE A BREAK UNTIL 3:15 THIS AFTERNOON.
18 DON'T DISCUSS THE CASE.

19
20 (RECESS.)

21

22

23

24

25

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3927

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT OUTSIDE THE PRESENCE
3 OF THE JURY:)

4 THE CLERK: THIS IS THE CLERK OF THE COURT.

5 FOR THE RECORD, THERE WAS SOME MISLABELED
6 EXHIBITS, AND THE CORRECT LABEL OF EXHIBITS IS 11,021,
7 IDENTIFIED AS JUNE 9TH, '91 QUOTE PAGE; 11,022 -- AND THAT
8 IS A JUNE -- MARCH 8TH, 1982 QUOTE PAGE.

9 THERE IS A CORRECTION ON 21. IT'S JUNE 9TH,
10 1981. 11,023, WHICH IS A 5-3-94 QUOTE PAGE.
11 11,025, WHICH IS THE SURGEON GENERAL'S
12 REPORT.

13 11,026, GRAPH OF HOW MANY SMOKERS THERE WERE.
14 AND 11,027, WHICH IS A GRAPH OF SMOKING

15 RATES.
16 (PAUSE IN PROCEEDINGS.)
17 (THE FOLLOWING PROCEEDINGS WERE HELD
18 IN OPEN COURT WITHIN THE PRESENCE
19 OF THE JURY:)
20 THE COURT: OUR JURY PANEL IS PRESENT. COUNSEL ARE
21 PRESENT, AS WELL. THE WITNESS IS ON THE STAND.
22 MA'AM, YOU UNDERSTAND YOU'RE STILL UNDER OATH?
23 THE WITNESS: YES, I DO.
24 THE COURT: PROCEED.
25 Q. BY MR. PIUZE: LET ME SLIGHTLY SHIFT GEARS.
26 YOU TOLD THE JURY THAT AMONG OTHER STUFF THAT
27 YOU REVIEWED IN ORDER TO RESEARCH THE ISSUE WAS THE
28 DEPOSITION OF MY CLIENT AND HIS WIFE, AND AT LEAST ONE OF
3928
1 HIS KIDS; RIGHT?
2 A. THAT'S TRUE.
3 Q. WHAT'S HIS WIFE'S NAME?
4 A. JUDY.
5 Q. I WANTED TO SHOW YOU A PORTION OF HER
6 DEPOSITION HERE. I'VE GOT VOLUME 1, AND I'M LOOKING AT
7 PAGE -- IT'S ROUGHLY 49 THROUGH 51.
8 MR. LEITER: CAN I SEE IT, PLEASE?
9 MR. PIUZE: SURE.
10 MR. LEITER: THIS IS THE TRIAL TESTIMONY?
11 MR. PIUZE: NO, IT'S A DEPOSITION.
12 OKAY.
13 Q. NOW THAT HE IS DONE LOOKING, THERE WERE THREE
14 DIFFERENT VOLUMES OF HER DEPOSITION; RIGHT?
15 A. I DON'T REMEMBER HOW MANY VOLUMES THERE WERE.
16 I READ THEM ALL.
17 Q. I WANTED TO ASK YOU SOME QUESTIONS FROM THE
18 FIRST VOLUME OF HER DEPOSITION, AND THIS WAS TAKEN ON
19 JANUARY 12TH, 2001, OKAY?
20 AND LET ME SHOW YOU WHAT I'M GOING TO ASK YOU
21 ABOUT IT HERE.
22 ON PAGE 49 MR. LEITER ASKED HER: "DOES
23 SMOKING CAUSE LUNG CANCER?"
24 DO YOU SEE THAT?
25 A. YES, I DO.
26 Q. DID YOU READ THAT DEPOSITION, OR DID YOU SEE A
27 VIDEOTAPE OF HER OR WHAT?
28 A. NO, I READ IT.
3929
1 Q. SO JANUARY, 2001, DOES SMOKING CAUSE LUNG
2 CANCER?
3 AND JUST SO THE JURY WILL KNOW WHAT'S
4 HAPPENING HERE, THERE WAS SOME COMMENTS BY ME; RIGHT?
5 A. THAT'S CORRECT.
6 Q. LET'S GET TO HER ANSWER. WHAT DOES SHE SAY?
7 A. SHE SAID, "A LOT OF DOCTORS CAN'T ANSWER THE
8 QUESTION."
9 Q. AND MR. LEITER'S NEXT QUESTION IS WHAT?
10 A. "DO YOU HAVE A BELIEF AS TO WHETHER SMOKING
11 CAUSES LUNG CANCER?"
12 Q. HER ANSWER?
13 A. "I'M NOT SURE WHAT TO BELIEVE."
14 Q. YOU'RE DOING SO WELL, BE MR. LEITER AGAIN.
15 A. ALL RIGHT.
16 "WHAT DO YOU MEAN?"
17 Q. AND MRS. BOEKEN?
18 A. "I HAVE HEARD CONFLICTING THINGS, AND I'M NOT
19 SURE WHAT TO BELIEVE, THAT SOME PEOPLE MIGHT NOT AND OTHER

20 PEOPLE DO."
21 Q. GO AHEAD.
22 A. (READING:)
23 "THAT'S YOUR BELIEF AS WE SIT
24 HERE TODAY?
25 "UH-HUH. YES.
26 "TELL ME WHAT CONFLICTING
27 THINGS YOU HAVE HEARD?
28 "ANSWER: THAT SOME PEOPLE
3930
1 SMOKE THEIR WHOLE LIFE AND DON'T GET
2 CANCER AND THAT SOME PEOPLE SMOKE
3 AND GET LUNG CANCER, EMPHYSEMA, AND
4 OTHER CANCERS.
5 "HAVE YOU FINISHED YOUR
6 ANSWER?
7 "YES."
8 Q. GO A LITTLE FURTHER.
9 A. DO YOU WANT ME TO JUST GO TO THE END?
10 Q. GO TO RIGHT ABOUT THERE, WHICH IS THE END OF
11 THE TOPIC, LINE 23.
12 A. ALL RIGHT.
13 (READING:)
14 "HAVE YOU FINISHED YOUR
15 ANSWER?
16 "YES.
17 "ANY OTHER CONFLICTING
18 INFORMATION YOU HAVE HEARD?
19 "ANSWER: THAT'S ALL I CAN
20 REMEMBER RIGHT NOW.
21 "QUESTION: DO YOU BELIEVE
22 SMOKING CAUSES LUNG CANCER IN SOME
23 PEOPLE?
24 "ANSWER: YES.
25 "QUESTION: DO YOU BELIEVE
26 SMOKING CAUSES EMPHYSEMA, HEART
27 DISEASE AND OTHER DISEASES IN SOME
28 PEOPLE?
3931
1 "ANSWER: YES.
2 "QUESTION: HOW LONG HAVE
3 YOU BELIEVED SMOKING CAUSES DISEASES
4 IN SOME PEOPLE?
5 "ANSWER: PERHAPS THE LAST
6 10 YEARS.
7 "QUESTION: WHAT HAPPENED ABOUT
8 10 YEARS AGO THAT CAUSED YOU TO HAVE
9 THAT BELIEF?
10 "ANSWER: I THINK THAT THAT'S
11 WHEN THERE WERE MORE NEWS REPORTS
12 ABOUT IT."
13 Q. THANK YOU. NOW, FROM WHAT YOU COULD READ OF
14 THE TRANSCRIPT, MRS. BOEKEN IS NOT DEVELOPMENTALLY
15 DISABLED; RIGHT?
16 A. I HAVE NOT HEARD THAT SHE WAS, CERTAINLY.
17 Q. AND IN 2001 SHE SAID, I'M NOT SURE WHAT THE
18 BELIEF IS, A LOT OF DOCTORS CAN'T ANSWER THE QUESTION.
19 I'VE HEARD A LOT OF CONFLICTING THINGS. I'M NOT SURE WHAT
20 TO BELIEVE. SOME PEOPLE MIGHT, SOME PEOPLE MIGHT NOT.
21 SOME PEOPLE SMOKE THEIR WHOLE LIVES AND DON'T GET CANCER.
22 SOME PEOPLE SMOKE AND GET LUNG CANCER.
23 NOW, DO YOU HAVE ANY IDEA AS A RESULT OF ALL
24 THE RESEARCH YOU'VE DONE, WHY SHE THOUGHT THERE WAS A

25 CONFLICT ABOUT THAT?

26 A. WELL, I BELIEVE THAT FROM WHAT SHE SAID THERE
27 THAT SHE UNDERSTOOD THAT SOME PEOPLE WILL AND SOME PEOPLE
28 WON'T, WHICH IS WHAT DR. BRESLOW SAID WHEN HE
3932

1 TOLD CALIFORNIANS IN 1959 THAT IT'S RUSSIAN ROULETTE, WHICH
2 IS A ONE-IN-SIX CHANCE, RUSSIAN ROULETTE.
3 IT SOUNDS TO ME FROM WHAT YOU READ THERE AND
4 WHAT I RESTATED THAT THAT'S PART OF WHAT HER CONFLICT WAS
5 ABOUT.

6 Q. HAVE YOU EVER HEARD THE CONCEPT THAT IT WAS
7 THE TOBACCO INDUSTRY'S STRATEGY TO PURPOSEFULLY CREATE
8 DOUBT ABOUT THE HEALTH TRADE? HAVE YOU EVER HEARD THAT?
9 MR. LEITER: OBJECTION AS BEYOND THE SCOPE OF HER
10 WORD.

11 THE COURT: OVERRULED. THIS IS ABOUT HISTORY.
12 THE WITNESS: WELL, I THINK YOU SAID THAT IN YOUR
13 COMPLAINT. I READ THE COMPLAINT IN THIS CASE. CERTAINLY
14 I'M FAMILIAR WITH THAT.

15 Q. BY MR. PIUZE: ACTUALLY, I HAVEN'T READ IT, AT
16 LEAST NOT FOR A LONG TIME.
17 IT WAS A LONG COMPLAINT, WASN'T IT?

18 A. YES, IT WAS SUBSTANTIAL.

19 Q. ASIDE FROM MY COMPLAINT -- MEANING THE
20 LAWSUIT, RIGHT, COMPLAINT EQUALS LAWSUIT --
21 A. THAT'S CORRECT.

22 Q. -- HAVE YOU EVER HEARD FROM THE TOBACCO
23 INDUSTRY'S OWN MOUTH, OWN DOCUMENTS, ITS OWN HAND, THAT IT
24 WAS THEIR STATED INDUSTRY-WIDE STRATEGY TO CREATE DOUBT IN
25 THE MINDS OF AMERICAN CONSUMERS ABOUT THE HEALTH ISSUE?

26 A. I HAVE NOT HEARD THAT FROM THEIR OWN MOUTHS.

27 Q. NOW, I'D LIKE TO SHOW YOU A BRIEF CLIP, AND
28 THIS ONE ISN'T GEOFFREY BIBLE IN 1998 IN MINNESOTA. AND
3933

1 THIS ONE ISN'T THE C.E.O. MURPHY IN 1994 IN WASHINGTON,
2 D.C.

3 THIS IS A MAN NAMED BOWLING WHO IS THE VICE
4 PRESIDENT OF THE CORPORATION IN NEW YORK CITY IN 1976. AND
5 I'LL SHOW YOU THAT IN A SECOND.

6 BUT BEFORE I DO, I'D JUST LIKE TO QUESTION YOU
7 ON THIS. I'D JUST LIKE TO REMIND YOU, A LOT OF DOCTORS
8 CAN'T ANSWER THE QUESTION. I'VE HEARD CONFLICTING THINGS.
9 SOME PEOPLE DO, SOME PEOPLE DON'T. SOME PEOPLE WHO NEVER
10 SMOKE GET CANCER. SOME PEOPLE WHO SMOKE FOREVER DON'T GET
11 CANCER, OKAY? CAN DO YOU THAT FOR ME, PLEASE, DOCTOR?
12 (A VIDEOTAPE WAS PLAYED AND NOT REPORTED
13 PER STIPULATION OF COUNSEL.)

14 Q. BY MR. PIUZE: SO IT SOUNDS LIKE MRS. BOEKEN,
15 DOESN'T IT?

16 A. NO, I DON'T THINK IT SOUNDS LIKE MRS. BOEKEN
17 AT ALL.

18 Q. THE WORDS SOUND LIKE THE SAME WORDS SHE WAS
19 SAYING 30 YEARS LATER?

20 A. NO, THEY DON'T TO ME.

21 Q. THEY DON'T SOUND THE SAME TO YOU?

22 A. NO, I DON'T THINK SHE WAS SAYING I COULD GET
23 SMOKING (SIC) FROM BREATHING THE AIR IN NEW YORK. I DON'T
24 THINK HIS WORDS WERE HER WORDS, HONESTLY.

25 Q. SHE SAID SHE HAD HEARD A LOT OF CONFLICTING
26 THINGS; RIGHT?

27 A. YES, AS I JUST READ.

28 Q. YOU'RE TELLING THE JURY THERE WERE NO
3934

1 CONFLICTING THINGS; RIGHT?
2 A. NO, I'M NOT.
3 Q. I THOUGHT THE THRUST OF YOUR TESTIMONY --
4 FORGIVE ME IF I'M WRONG, I THOUGHT THE THRUST OF YOUR
5 TESTIMONY WAS THAT BY 1964 THE DANGER HAD BEEN ESTABLISHED,
6 IT WAS A DONE DEAL. THAT'S YOUR TESTIMONY, ISN'T IT?
7 A. YES, IT IS.
8 Q. SO IF BY 1964 THE DANGER HAD BEEN ESTABLISHED,
9 IT WAS A DONE DEAL, WHERE DOES HER CONFLICT COME FROM?
10 MR. LEITER: OBJECTION, COMES FROM SPECULATION.
11 THE COURT: OVERRULED.
12 HISTORICALLY, MA'AM.
13 THE WITNESS: OKAY. THAT'S HELPFUL.
14 I THINK THAT PART OF WHAT SHE SEEMED TO ME --
15 AT LEAST AS I READ THAT -- TO BE REFERRING TO WAS THE
16 PROBLEM OF YOU DON'T KNOW IF YOU'LL GET IT. SOME PEOPLE
17 GET IT AND SOME PEOPLE DON'T, AND WE KNOW THAT'S TRUE.
18 AND I DIDN'T SAY, I BELIEVE, IN MY TESTIMONY,
19 THAT THERE WASN'T CONFLICTING INFORMATION, BECAUSE I SHOWED
20 YOU AND SHOWED THE JURY THE PILE OF 41, RIGHT, WHERE THE
21 TOBACCO INDUSTRY SAID, YOU KNOW THIS IS OUR STAND AND OUR
22 POSITION. AND I MENTIONED THAT THERE WERE REFERENCES IN
23 THE LARGER PILE, IN ABOUT FIVE PERCENT OF THE CASES, VERY
24 BRIEFLY, TO WHAT THE TOBACCO INDUSTRY STATEMENT WAS.
25 SO I CERTAINLY WOULDN'T TESTIFY THAT THERE WAS
26 NO -- THAT THERE WAS NEVER ANY DISCUSSIONS THAT SMOKING
27 COULD -- YOU KNOW, THAT THE EFFORTS -- THAT THE RESULTS
28 WEREN'T CONCLUSIVE OR SOMETHING LIKE THAT. I HOPE I MADE
3935

1 THAT CLEAR.
2 Q. BY MR. PIUZE: I DON'T KNOW. WHEN YOU TOOK
3 THIS WORK -- IT WASN'T YOU -- WHEN MR. LEITER TOOK THIS
4 HUGE BOX OF ALL THE STUFF THAT WAS THIS HIGH, (INDICATING),
5 OVER ON THIS SIDE WAS THIS TEENY LITTLE THING THAT YOU
6 COULD HARDLY SEE, WASN'T THE THRUST OF YOUR TESTIMONY THAT
7 THERE WAS VIRTUALLY NO CONFLICTING INFORMATION, AND
8 CERTAINLY IN LATER YEARS, NOTHING? ISN'T THAT WHAT WE
9 HEARD FROM YOU?
10 A. AND YOU'RE CHANGING YOUR SENTENCE, I THINK.
11 YES, VIRTUALLY THERE WAS NO CONFLICTING
12 INFORMATION. THE OVERWHELMING MESSAGE THAT WE ALL GOT,
13 THAT THIS FAMILY GOT, WAS THAT SMOKING WAS BAD FOR YOU.
14 I REMEMBER MR. BOEKEN'S STEPSON SAYING THAT HE
15 KNEW BY THE TIME HE GOT OUT OF THIRD GRADE -- AND I HAVE TO
16 SAY THAT'S MY FEELING ABOUT MY OWN LIFE AND WHAT I'VE ALSO
17 SEEN AS A HISTORIAN -- DOES SOMEONE SOMETIMES SAY SOMETHING
18 TO YOU CONFLICTING THAT GOES AGAINST ALL YOUR OTHER
19 KNOWLEDGE? YES, BECAUSE IT'S A BIG WORLD OUT THERE. BUT
20 DID PEOPLE GET THE MESSAGE? ABSOLUTELY.
21 Q. SEE THOSE BLUE LINES DOWN THERE?
22 A. YES.
23 Q. 1998?
24 A. YES, I DO.
25 Q. HOW MANY PEOPLE IS THAT?
26 A. I DON'T KNOW HOW MANY MILLIONS IT WOULD BE. I
27 KNOW THE PERCENTAGES, SIR.
28 Q. HOW MANY MILLION PEOPLE SMOKE IN THE UNITED
3936

1 STATES?
2 A. I DON'T KNOW. I CAN TELL YOU ABOUT THE
3 PREVALENCE OF IT. I DON'T KNOW HOW MANY SEPARATE
4 INDIVIDUALS THAT TALLIES UP TO BE.
5 Q. DO YOU KNOW HOW MANY MILLION PEOPLE SMOKED

6 BACK HERE, (INDICATING)?
7 A. NO, BECAUSE IT'S A PERCENTAGE OF THE
8 POPULATION. AND THE POPULATION HAS GROWN, SO IT WOULD BE
9 40 PERCENT OR 45 PERCENT OF A SMALLER POPULATION THAN
10 TODAY.
11 Q. THAT'S A REAL POINT, ISN'T IT? ALTHOUGH THIS
12 LINE GOES DOWN, DOWN, DOWN, THAT'S A PERCENTAGE OF THE
13 POPULATION THAT'S GONE DOWN, DOWN, DOWN?
14 A. YES, THAT'S TRUE.
15 Q. BUT THE POPULATION IS GOING UP, UP, UP?
16 A. YES, IN THE UNITED STATES THE POPULATION IS
17 STILL CLIMBING.
18 Q. WHAT'S THE FIRST YEAR ON THE CHART?
19 A. THIS FIRST YEAR ON THIS CHART IS 1965.
20 Q. WHAT WAS THE POPULATION IN THE UNITED STATES
21 IN 1965?
22 A. I'M GOING TO GUESS AROUND 200 MILLION, MAYBE
23 180. BUT SOMEWHERE IN THERE.
24 Q. I WAS GOING TO SAY SOMETHING ABOUT YOUR MATH,
25 BUT I WON'T.
26 NOW, WHAT'S THE POPULATION OF THE UNITED
27 STATES TODAY?
28 A. THE POPULATION TODAY IS CLOSER TO THE
3937
1 300 MILLION PEOPLE.
2 Q. SO YOU'RE SAYING IT ALMOST DOUBLED?
3 A. THE POPULATION HAS GONE WAY UP, ABSOLUTELY,
4 PRIMARILY BECAUSE OF IMMIGRATION AFTER 1965.
5 Q. THAT'S FINE. AT ANY RATE, ALTHOUGH THAT LINE
6 GOES DOWN, DOWN, DOWN, PERCENTAGEWISE, IF THE POPULATION
7 HAS ALMOST DOUBLED, THE NUMBER OF SMOKERS WOULD BE ALMOST
8 THE SAME, WOULDN'T IT?
9 A. I DON'T KNOW THAT IT WOULD BE ALMOST THE
10 SAME. I THINK THAT WOULD BE AN INTERESTING DEMOGRAPHIC
11 QUESTION THAT YOU COULD INVESTIGATE TOGETHER.
12 BUT IT'S CERTAINLY TRUE, LIKE COFFEE DRINKERS
13 OR SOMETHING. HOW MANY PEOPLE DRINK COFFEE? THE MORE
14 PEOPLE YOU HAVE, YES, NUMERICALLY THE NUMBERS WOULD GO UP.
15 BUT I THINK WHAT'S IMPORTANT TO PEOPLE IN THE PUBLIC HEALTH
16 COMMUNITY AND WHY THEY HAVE FELT THAT THEY WERE A SUCCESS
17 IS BECAUSE GETTING PEOPLE TO DO THE RIGHT THING, THE NUMBER
18 OF PEOPLE WHO ARE DOING THAT RIGHT THING IS PROPORTIONALLY
19 A MUCH BIGGER PERCENTAGE OF THE POPULATION.
20 Q. LET ME TRY THIS. I'M GOING TO USE YOUR
21 NUMBERS JUST FOR THE HECK OF IT.
22 IF THERE WERE 180 MILLION PEOPLE IN THE
23 COUNTRY, AND 40 PERCENT SMOKED, I THINK THAT COMES UP TO
24 72 MILLION PEOPLE. I MAY BE WRONG. I THINK THAT'S RIGHT.
25 NOW, IF THERE WERE ALMOST 300 MILLION PEOPLE
26 IN THE COUNTRY, WHAT PERCENTAGE ARE SMOKING?
27 A. IN CALIFORNIA IT'S 18 PERCENT.
28 Q. IS THIS A CALIFORNIA CHART?
3938
1 A. NO. IN THE UNITED STATES IT'S 24 PERCENT,
2 APPROXIMATELY.
3 Q. LET'S ROUND IT OFF TO A QUARTER, OKAY,
4 INSTEAD OF 24, TO MAKE IT EASIER FOR ME. LET'S MAKE IT
5 25 PERCENT.
6 IF THERE IS ABOUT 300 MILLION PEOPLE IN THE
7 COUNTRY, A QUARTER OF THAT IS 75 MILLION PEOPLE.
8 72 MILLION -- THESE ARE JUST ROUND NUMBERS --
9 1965. 75 MILLION IN THE YEAR 2001. SO I GUESS THE NUMBER
10 OF SMOKERS, IF THAT'S RIGHT, HASN'T DECLINED AT ALL, HAS

11 IT?
12 A. NOT IN TERMS OF PERSONS, IF YOU COUNT IT THAT
13 WAY, NOT THAT WE'VE GOT THE EXACT FIGURES. BUT, YES, THAT
14 WOULD BE TRUE.
15 Q. WE HEARD SOME TESTIMONY IN THE LAST DAY OR
16 SO -- I FORGET WHERE IT WAS -- SOMEONE SAID AT ONE POINT
17 THERE WAS 70 MILLION SMOKERS. I THINK IT WAS THIS GUY
18 BOWLING, IN 1976, BEING INTERVIEWED FOR PHILIP MORRIS, SAYS
19 THERE IS 70 MILLION SMOKERS IN AMERICA IN 1976.
20 ANYWAY, IF THERE ARE 75 MILLION SMOKERS IN
21 AMERICA, IT DOESN'T MATTER TO ME IF IT'S 65 OR 60 OR 50,
22 IT'S A LOT OF PEOPLE, ISN'T IT?
23 A. YES, IT'S A LOT OF PEOPLE.
24 Q. CIGARETTES KILL; RIGHT?
25 A. WELL, I THINK THEY DO, YES.
26 Q. ARE THEY GETTING CONFLICTING INFORMATION?
27 A. I DON'T THINK SO.
28 Q. DO YOU HAPPEN TO KNOW ONE WAY OR THE OTHER IN
3939
1 1998 IN MINNESOTA, WHETHER THE PHILIP MORRIS COMPANY
2 ADMITTED OR DENIED THAT SMOKING CAUSED LUNG CANCER?
3 A. WELL, IT SOUNDED LIKE FROM THE TRANSCRIPT THAT
4 YOU WERE READING EARLIER THAT THEY SAID THAT IT WAS
5 INCONCLUSIVE OR SOMETHING TO THAT EFFECT, FROM WHAT YOU
6 JUST READ. THAT'S MY IMPRESSION OF IT.
7 Q. THAT WAS A GOOD IMPRESSION.
8 MR. LEITER: OBJECT TO COMMENTARY.
9 THE COURT: SUSTAINED.
10 MR. PIUZE: I'M SORRY. OKAY.
11 Q. IN 1998, IN MINNESOTA, PHILIP MORRIS DID NOT
12 ADMIT THAT SMOKING CAUSED LUNG CANCER. DO YOU KNOW, AS YOU
13 SIT HERE RIGHT NOW, IF PHILIP MORRIS AGREES THAT SMOKING
14 CAUSES LUNG CANCER?
15 A. I BELIEVE THEY DO. IT SEEMS TO ME THERE WAS A
16 BIG DEAL WITH ABOUT WHAT THEY PUT ON THE INTERNET WHERE
17 THEY CAME OUT AND SAID IT'S THE CAUSE OF LUNG CANCER, SO I
18 THINK SO, YES.
19 Q. DID YOU STUMBLE ACROSS THAT ON THE INTERNET?
20 A. NO, I DIDN'T STUMBLE ACROSS THAT, I LOOKED IT
21 UP.
22 Q. WHEN DID YOU DO THAT?
23 A. I DON'T KNOW, SEVERAL MONTHS AGO, A NUMBER OF
24 MONTHS AGO.
25 Q. CERTAINLY BEFORE THIS TRIAL STARTED?
26 A. OH, YES.
27 Q. LET ME SHOW YOU SOMETHING, IF I COULD.
28 (PAUSE IN PROCEEDINGS.)
3940
1 Q. BY MR. PIUZE: ALTHOUGH THIS HAS BEEN
2 DISPLACED, I DON'T KNOW -- I DON'T THINK IT EVER GOT A
3 NUMBER.
4 CAN I GET MY PEN BACK FROM YOU?
5 A. CERTAINLY.
6 MR. PIUZE: LET ME MAKE THIS, MR. CLERK, 10,010.
7 DOES THAT SOUND ABOUT RIGHT?
8 THE CLERK: 10,000 -- YEAH, THAT'S FINE.
9 Q. BY MR. PIUZE: IS THAT WHAT YOU SAW ON THE
10 INTERNET?
11 A. YOU KNOW, WEB PAGES CHANGE. I DON'T THINK
12 THAT THIS IS THE PARTICULAR THING I SAW ON THE INTERNET.
13 BUT THAT SOUNDS ABOUT RIGHT. YEAH, THAT SEEMS TO ME IS THE
14 GIST OF WHAT I SAW.
15 Q. ALL RIGHT.

16 THIS IS 2001. CIGARETTE SMOKING AND DISEASE
17 IN SMOKERS. WE AGREE WITH THE OVERWHELMING MEDICAL AND
18 SCIENTIFIC CONSENSUS THAT CIGARETTE SMOKING CAUSES LUNG
19 CANCER, HEART DISEASE, EMPHYSEMA AND OTHER SERIOUS DISEASES
20 IN SMOKERS.

21 NOW, YOU'VE KNOWN THAT FOR HOW LONG, SINCE YOU
22 WERE IN THE THIRD GRADE?

23 A. IT'S KIND OF A ROUGH ESTIMATE, BUT THAT --
24 YEAH, I THINK THAT'S ABOUT RIGHT.

25 Q. WHO WAS PRESIDENT? I DON'T WANT TO ASK YOUR
26 AGE. WHO WAS PRESIDENT?

27 A. I THINK THAT'S WHEN JOHN KENNEDY WAS
28 PRESIDENT. I'D HAVE TO GO BACK AND DOUBLE-CHECK THE YEARS
3941

1 OF MY THIRD GRADE EDUCATION.

2 Q. LET ME SHOW YOU AS 10,011, ALSO FROM THE
3 PHILIP MORRIS WEB SITE -- BUT THIS ONE IS DECEMBER 15TH,
4 1999.

5 AT THE END OF 1999 HAD PHILIP MORRIS,
6 ACCORDING TO ITS WEB SITE, DECIDED THAT CIGARETTE SMOKING
7 CAUSED LUNG CANCER?

8 A. WELL, IT'S THE WORDS I'M READING RIGHT NOW.
9 IT SAYS:

10 "SMOKERS ARE FAR MORE LIKELY TO
11 DEVELOP SERIOUS DISEASES LIKE LUNG
12 CANCER THAN NONSMOKERS. THERE IS NO
13 SAFE CIGARETTE."
14 THAT AGAIN, TO ME, SEEMS THE GIST OF WHAT THEY
15 ARE SAYING IS THAT THEY DO AGREE.

16 Q. YOU SORT OF STARTED IN THE MIDDLE SOMEPLACE.
17 READ IT FROM THE BEGINNING.

18 A. YOU GOT ME AT THE POINT WHERE I HAD GOTTEN IN
19 MY READING.

20 IT SAYS:

21 "CIGARETTE SMOKING, HEALTH ISSUES
22 FOR SMOKERS. CIGARETTE SMOKING AND
23 DISEASE IN SMOKERS. THERE IS AN
24 OVERWHELMING MEDICAL AND SCIENTIFIC
25 CONSENSUS THAT CIGARETTE SMOKING
26 CAUSES LUNG CANCER, HEART DISEASE,
27 EMPHYSEMA AND OTHER SERIOUS DISEASES
28 IN SMOKERS. SMOKERS ARE FAR MORE
3942

1 LIKELY TO DEVELOP SERIOUS DISEASES
2 LIKE LUNG CANCER THAN NONSMOKERS.
3 THERE IS NO SAFE CIGARETTE. THESE
4 ARE AND HAVE BEEN THE METHODS OF
5 PUBLIC HEALTH AUTHORITIES WORLDWIDE.
6 SMOKERS AND POTENTIAL SMOKERS SHOULD
7 RELY ON THESE METHODS IN MAKING ALL
8 SMOKING-RELATED DECISIONS."

9 IS THAT FAR ENOUGH?

10 Q. YES. SO HERE IS 10 AND 11.
11 THIS IS THE END OF 1999, THE VERY, VERY, VERY
12 END OF 1999, AND THIS IS 2001. THEY ARE A YEAR APART.
13 WHAT'S CHANGED?

14 A. WELL, HONESTLY, THE WEB PAGES CHANGE. THEY
15 BOTH SAY THERE IS NO SAFE CIGARETTE.

16 Q. LET ME LEAD YOU. SEE WHERE IT SAYS "WE
17 AGREE"?

18 A. YES. SURE. I CAN START WITH THE WORDS "WE
19 AGREE" ON THIS WEB SITE.

20 Q. SO IN 2001, NOW -- YOUR HISTORY STARTED IN

21 1942, BUT YOUR REAL HISTORY STARTED IN 1950. 51 YEARS
22 AFTER YOUR HISTORY STARTED PHILIP MORRIS AGREES THAT
23 SMOKING CAUSES LUNG CANCER; RIGHT?
24 A. SIR, I DISAGREE WITH YOU, BECAUSE IF I WAS TO
25 READ THESE, I THINK THIS USES THE WORDS "WE AGREE," BUT THE
26 ONE BEFORE IS THE SAME THING. IT DOESN'T USE THAT WORD,
27 BUT IT SAYS, "THERE IS OVERWHELMING EVIDENCE THERE IS NO
28 SAFE CIGARETTE."

3943

1 IF I WERE LOOKING AT THIS WEB SITE, I WOULD
2 SAY, 1999 THEY WERE SAYING IT'S BAD FOR YOU, IT CAUSES LUNG
3 CANCER. SO THAT'S HOW I WOULD READ THAT.
4 Q. SO LET'S GO WITH THAT. IN 1999 THERE WAS
5 OVERWHELMING EVIDENCE; RIGHT?
6 A. YES, THAT'S WHAT IT SAYS.
7 Q. IN 1998 THERE WAS OVERWHELMING EVIDENCE?
8 A. I'M SORRY, I DON'T UNDERSTAND YOUR QUESTION.
9 Q. I'M GOING WITH YOU. YOU SAY THERE WAS
10 OVERWHELMING EVIDENCE THAT SMOKING CAUSED LUNG CANCER AND
11 OTHER SERIOUS DISEASES. I AGREE WITH YOU. 1999,
12 DECEMBER.
13 NOW I'M ASKING YOU, ISN'T THE SAME TRUE OF
14 1998?
15 A. I THINK THE SAME IS TRUE OF ALL OF THE YEARS
16 IN THE PERIOD THAT I'VE BEEN LOOKING AT, THAT THERE WAS
17 OVERWHELMING EVIDENCE AND A SCIENTIFIC CONSENSUS ON THAT,
18 AND THAT THE PUBLIC HEARD THAT CONSENSUS AND WAS INFLUENCED
19 DEEPLY BY IT.
20 Q. LET'S STAY WITH 1998 FOR A MINUTE.
21 A. OKAY.
22 Q. BECAUSE IF YOU THINK THEY ARE ADMITTING
23 SOMETHING HERE, I DON'T SEE THE WORDS -- IN 1998 WHEN THERE
24 WAS ALSO AN OVERWHELMING SCIENTIFIC CONSENSUS, THAT'S THE
25 VERY YEAR THAT THE CHAIRMAN, CHIEF EXECUTIVE OFFICER OF THE
26 CORPORATION, TESTIFIED UNDER OATH IN MINNESOTA THAT HE
27 DIDN'T THINK ONE PERSON HAD EVER BEEN KILLED FROM TOBACCO;
28 RIGHT?

3944

1 MR. LEITER: OBJECTION. THIS IS ARGUMENT.
2 THE COURT: OVERRULED.
3 THE WITNESS: IF YOU'RE REFERRING TO THAT BIBLE,
4 THAT'S THE MINNESOTA ONE, YES, THAT SOUNDS LIKE THAT WAS
5 THE TESTIMONY HE WAS GIVING, THAT HE DID NOT BELIEVE THAT
6 IT WOULD KILL PEOPLE.
7 Q. BY MR. PIUZE: THE ONLY POINT I'M TRYING TO
8 MAKE HERE IS 1998 AND 1999 AND 2000, OF COURSE, THERE WAS
9 OVERWHELMING EVIDENCE THAT PHILIP MORRIS DIDN'T ADMIT
10 ANYTHING IN 1998, DID IT?
11 A. NOT IN THAT TESTIMONY OF MR. BIBLE, CERTAINLY
12 NOT.
13 Q. WELL, THE CHIEF EXECUTIVE OFFICER, THE BOSS,
14 DIDN'T ADMIT A THING, DID HE?
15 A. I DON'T THINK SO.
16 Q. SO NOW -- THANK YOU.
17 WHAT CHANGED? WHAT NEW SCIENTIFIC FINDS HAVE
18 COME ALONG? WHAT NEW MEDICAL STUDIES HAVE COME ALONG?
19 WHAT NEWS FLASH HAS COME ALONG, SO THAT IN THE YEAR 2001
20 NOW, PHILIP MORRIS NOW ADMITS THAT SMOKING CAUSES LUNG
21 CANCER?
22 MR. LEITER: OBJECTION. THIS IS ARGUMENTATIVE.
23 SHE'S NOT HERE AS A SCIENTIFIC WITNESS.
24 THE COURT: HISTORICALLY HAVE THERE BEEN ANY
25 HISTORICAL DEVELOPMENTS?

26 THE WITNESS: NO, I DON'T THINK THERE HAVE BEEN ANY
27 MAJOR HISTORICAL DEVELOPMENTS OTHER THAN WHAT YOU'VE BEEN
28 TALKING, THE CUMULATIVE ANGER THAT PEOPLE HAD TOWARDS THE
3945

1 TOBACCO INDUSTRY, WHICH IS BEING EXPRESSED A LOT IN THE
2 PERIOD 1980 TO 1994.

3 SO I DON'T KNOW THEIR INTENT. I DON'T KNOW
4 WHY THEY DECIDED AT THIS MOMENT TO REVERSE THE STAND THAT
5 THEY HAD TAKEN PREVIOUSLY. BUT IT DOESN'T SEEM TO ME IT
6 WAS FROM ANY DIFFERENT MEDICAL EVIDENCE FROM THE PERIOD.

7 Q. BY MR. PIUZE: RIGHT.

8 SO DO YOU HAVE AN OPINION THAT PERHAPS NOW, 51
9 YEARS AFTER YOUR TIME LINE STARTED IN EARNEST, WHEN PHILIP
10 MORRIS ADMITS SMOKING CAUSES LUNG CANCER AND NOTHING HAS
11 CHANGED, THAT THIS IS SIMPLY A MARKETING DEVICE?

12 MR. LEITER: OBJECTION, CALLS FOR SPECULATION AND
13 IT'S ARGUMENT.

14 THE COURT: SUSTAINED.

15 Q. BY MR. PIUZE: DO YOU THINK THAT THIS IS MEANT
16 TO INFLUENCE JURIES?

17 MR. LEITER: OBJECTION, CALLS FOR SPECULATION.

18 THE COURT: SUSTAINED.

19 Q. BY MR. PIUZE: DO YOU THINK THIS IS MEANT TO
20 INFLUENCE PUBLIC OPINION?

21 MR. LEITER: OBJECTION, CALLS FOR PUBLIC SPECULATION
22 AS TO WHAT THEY INTENDED.

23 THE COURT: OVERRULED. OVERRULED.

24 THE WITNESS: WELL, IT IS DIFFICULT TO KNOW WHAT
25 THEIR STRATEGY IS. I DON'T KNOW. I DIDN'T STUDY THE
26 COMPANIES AND LOOK AT THEM, PER SE.

27 I WAS LOOKING AT WHAT PEOPLE WOULD KNOW. AND
28 AS I DEFINED MY QUESTION, WHAT I REALLY WANTED TO KNOW
3946

1 COMMONLY WAS KNOWN BY THE AVERAGE PERSON.

2 WILL THIS SWAY PUBLIC OPINION? DO THEY INTEND

3 IT TO SWAY PUBLIC OPINION? I THINK THAT IT'S CERTAINLY A
4 PART OF PUBLIC RELATIONS IN A SENSE THAT THEY ARE TELLING
5 PEOPLE THEIR POSITION, RIGHT, AND SO YOU DO THAT, PEOPLE
6 WILL KNOW YOUR POSITION, AND I THINK THEY HAVE BEEN A VERY
7 VILIFIED INDUSTRY. THERE HAS BEEN A LOT OF HATE GENERATED,
8 IN PART BY THESE CAMPAIGNS.

9 THE ONE I ALWAYS REMEMBER, BECAUSE IT WAS
10 RIGHT NEXT TO WHEN I WOULD DRIVE TO WORK, IS A PICTURE OF A
11 COFFIN. "THEY ARE MAKING A KILLING OFF YOU."

12 SO THIS WAS A VERY DELIBERATE AND IMPORTANT
13 CAMPAIGN IN CALIFORNIA, WHICH WAS WIDELY APPLAUDED BECAUSE
14 IT GOT THE SMOKING RATE TO GO DOWN.

15 SO IS THIS A RESPONSE TO THAT CAMPAIGN OF
16 THEIRS? IT SEEMS LIKE LOGICALLY IT COULD BE, WOULD BE.

17 Q. BY MR. PIUZE: YOU DON'T HAVE ANY SCIENTIFIC
18 DEGREES, DO YOU?

19 A. NO, I DON'T.

20 Q. YOU DON'T HAVE ANY MEDICAL DEGREES, DO YOU?

21 A. NO, I DON'T.

22 Q. YOU FIGURED OUT IN THE THIRD GRADE THAT
23 SMOKING WAS BAD FOR YOU; RIGHT?

24 A. I DIDN'T FIGURE IT OUT; I WAS TOLD THAT.

25 Q. WHY DO YOU THINK, HISTORICALLY SPEAKING -- NO
26 KIDDING -- WHY DO YOU THINK AFTER LOOKING AT THE
27 INFORMATION THAT YOU'VE LOOKED AT, IT TOOK PHILIP MORRIS 51
28 YEARS TO FIGURE THIS OUT?

3947

1 MR. LEITER: OBJECTION. IT'S ARGUMENT AND IT CALLS

2 FOR SPECULATION.
3 THE COURT: OVERRULED.
4 HISTORICALLY, IF YOU HAVE AN ANSWER.
5 THE WITNESS: YOUR HONOR, I DON'T, BECAUSE THE WAY
6 THE QUESTION IS PHRASED IT MAKES ME THINK I WOULD HAVE TO
7 KNOW WHAT THEIR COMPANY THINKING WAS AND STRATEGY WAS AS
8 THEY WERE LEARNING THIS INFORMATION THAT EVERYBODY KNEW,
9 AND WHY THEY CHOSE AT THIS MOMENT TO COME OUT ON IT, I
10 DON'T KNOW.
11 Q. BY MR. PIUZE: THANK YOU.
12 THIS IS YOUR FIRST TIME TESTIFYING; RIGHT?
13 A. THAT'S CORRECT.
14 Q. YOU'VE BEEN GIVEN AN EXTENSIVE BRIEFING ABOUT
15 THIS; CORRECT?
16 A. I DON'T KNOW WHAT YOU MEAN.
17 Q. WHAT'S THE NAME OF THE BLONDE LADY?
18 A. HER NAME IS JULIA TYLER.
19 Q. IS SHE A LAWYER FROM WASHINGTON, D.C.?
20 A. YES, SHE IS.
21 Q. HOW MANY TIMES HAVE YOU MET WITH JULIA TYLER?
22 A. I'VE SEEN HER OFF AND ON FOR A PERIOD OF A
23 YEAR AND A HALF, SO I DON'T KNOW, 10 TIMES MAYBE.
24 Q. HOW MANY HOURS HAVE YOU SPENT WITH HER IN THE
25 LAST YEAR?
26 A. IN THE LAST WEEK -- I WAS HERE YESTERDAY
27 BECAUSE I WAS ASKED TO BE UP HERE YESTERDAY, AND SO I SAW
28 HER ALL DAY YESTERDAY.
3948
1 WELL, HALF THE DAY YESTERDAY BECAUSE I GOT
2 HERE ON THE TRAIN AT NOON.
3 Q. DID YOU DISCUSS WHAT I MIGHT BE ASKING YOU?
4 A. YES, WE DISCUSSED IT A LITTLE BIT.
5 Q. DID YOU DISCUSS HOW TO TESTIFY?
6 A. NO.
7 Q. YOU'VE BEEN TOLD WHAT A HYPOTHETICAL QUESTION
8 IS?
9 A. I KNOW WHAT A HYPOTHETICAL QUESTION IS.
10 Q. WHAT IS THAT?
11 A. IT'S A QUESTION WHERE YOU SAY IF SOMETHING IS
12 THIS WAY, THEN WHAT? AND OF COURSE THE "IF SOMETHING IS
13 THIS WAY" IS UNPROVEN, SO THAT'S ALWAYS THE PROBLEM WITH A
14 HYPOTHETICAL QUESTION, WHICH HISTORIANS, BY THE WAY,
15 GENERALLY TEND TO AVOID. THEY LIKE TO LOOK AT WHAT
16 HAPPENED RATHER THAN WHAT MIGHT HAVE HAPPENED.
17 Q. WE KIND OF LIKE TO TRY TO DO THAT IN COURT,
18 TOO. IT'S MY OBLIGATION TO ASK A HYPOTHETICAL QUESTION
19 THAT I THINK I CAN PROVE THE "IF," OKAY?
20 SO HERE IS THE HYPOTHETICAL QUESTION. WHAT
21 IF -- I'D JUST LIKE YOU TO ASSUME THIS TO BE TRUE.
22 A. OKAY.
23 Q. WHAT IF IN THE EARLY 1950'S INFORMATION CAME
24 OUT THAT CIGARETTES CAUSED LUNG CANCER? SO I THINK I CAN
25 PROVE THAT PART, BECAUSE YOU AGREE INFORMATION CAME OUT
26 THAT CIGARETTES CAUSED LUNG CANCER; RIGHT?
27 A. YEAH, THAT'S THE EASY PART.
28 Q. AND WHAT IF THE TOBACCO INDUSTRY WAS A
3949
1 MULTIBILLION DOLLAR INDUSTRY, AND THAT IF TOBACCO REALLY
2 CAUSED LUNG CANCER, THAT THEY, THE INDUSTRY -- IT MIGHT
3 HAVE A MAJOR FINANCIAL PROBLEM ON ITS HAND?
4 THAT'S AN "IF." CAN YOU ASSUME THAT TO BE
5 TRUE?
6 A. YES.

7 Q. WHAT IF THE TOBACCO INDUSTRY, RATHER THAN
8 WITHDRAWING ITS PRODUCT FROM THE MARKET, OR RATHER THAN
9 TESTING ITS PRODUCT TO SEE WHETHER OR NOT IT CAUSED CANCER,
10 DECIDED, INSTEAD, ON A PUBLIC RELATIONS CAMPAIGN TO START
11 AT THE BEGINNING OF 1954, THROUGH SOMETHING CALLED THE
12 T.I.R.C. -- I'D ASK YOU TO ASSUME ALL OF THAT TO BE TRUE.
13 WILL YOU?
14 A. ONLY BECAUSE YOU ASK ME TO. THERE IS ONE PART
15 OF IT THAT I DIDN'T AGREE WITH.
16 MR. LEITER: I'LL OBJECT TO ALL OF THIS AS ARGUMENT
17 AND BEYOND THE SCOPE OF HER TESTIMONY.
18 THE COURT: IT IS A HYPOTHETICAL QUESTION. IT'S NOT
19 ARGUMENT.
20 OVERRULED.
21 Q. BY MR. PIUZE: AND WHAT IF FROM THEIR TRADE
22 ORGANIZATION -- "THEIR" MEANING THE WHOLE INDUSTRY OF
23 PHILIP MORRIS, AS ONE OF THE MAJOR PLACES, RIGHT OFF OF
24 THEIR OWN PEN, RIGHT ON THEIR OWN DOCKET, THEY SAID IN
25 1972, EIGHT YEARS AFTER THE DANGER HAD BEEN ESTABLISHED --
26 ACCORDING TO YOU -- WHAT IF THEY SAID, "FOR NEARLY 20 YEARS
27 THIS INDUSTRY HAS EMPLOYED A SINGLE STRATEGY TO DEFEND
28 ITSELF ON THREE MAJOR FRONTS: LITIGATION, POLITICS, AND
3950
1 PUBLIC OPINION? WHILE THIS STRATEGY WAS BRILLIANTLY
2 CONCEIVED AND EXECUTED OVER THE YEARS, HELPING US TO WIN
3 IMPORTANT BATTLES, IT IS ONLY FAIR TO SAY THAT IT IS NOT,
4 NOR WAS IT INTENDED TO BE A VEHICLE FOR VICTORY. ON THE
5 CONTRARY, IT HAS ALWAYS BEEN A HOLDING STRATEGY CONSISTING
6 OF CREATING DOUBT ABOUT THE HEALTH CHARGE WITHOUT ACTUALLY
7 DENYING IT."
8 I'M GOING TO ASK YOU TO ASSUME THAT TRADE
9 ORGANIZATION WROTE THAT DOCUMENT. IT'S IN EVIDENCE HERE.
10 JUST ASSUME THAT, OKAY?
11 HERE IS THE QUESTION, HISTORICALLY.
12 A MULTIBILLION DOLLAR CORPORATION IS FACED
13 WITH POTENTIAL FINANCIAL DISASTER, AND WHAT IT DOES IS
14 CREATE A TRADE ORGANIZATION TO CREATE DOUBT ABOUT THE
15 HEALTH ISSUE. HISTORICALLY SPEAKING -- BECAUSE I KNOW
16 YOU'VE DONE HISTORICAL PERSPECTIVES ON ROCKEFELLER, AMONG
17 OTHERS, WHAT WAS ITS MOTIVATION TO CREATE DOUBT ABOUT THE
18 HEALTH ISSUE?
19 MR. LEITER: OBJECTION, CALLS FOR SPECULATION.
20 THE COURT: FROM A HISTORICAL PERSPECTIVE, IF YOU
21 HAVE AN ANSWER.
22 THE WITNESS: WHAT WAS ITS MOTIVATION TO CREATE
23 DOUBT? I THINK THAT ITS MOTIVATION -- IT SEEMED TO BE
24 STATED IN THE DOCUMENTS -- MAYBE IT WAS ONE OF YOUR
25 HYPOTHETICALS -- WAS THAT THIS WOULD HAVE MAJOR FINANCIAL
26 IMPLICATIONS IF THE INDUSTRY WAS COMPLETELY SHUT DOWN, JUST
27 LIKE IT DID FOR THE ALCOHOL INDUSTRY WHEN IT WAS COMPLETELY
28 SHUT DOWN IN THE '20S.
3951
1 Q. BY MR. PIUZE: THE MOTIVATION OF THE TOBACCO
2 INDUSTRY, THROUGH ITS TRADE ORGANIZATION, WAS TO CONTINUE
3 TO MAKE BILLIONS UPON BILLIONS OF DOLLARS WHILE SOWING THE
4 SEEDS OF DOUBT IN THE MINDS OF THE VERY PEOPLE THAT WERE
5 SUCKING IN THAT POISON; RIGHT?
6 MR. LEITER: OBJECTION, IT'S ARGUMENTATIVE AND IT
7 CALLS FOR SPECULATION.
8 THE COURT: OVERRULED. SHE HAS TESTIFIED TO THE
9 HISTORY OF THIS PERIOD, AND SHE MAY BE CROSS-EXAMINED ON
10 IT.
11 THE WITNESS: WELL, YOU'RE SAYING IT WAS THEIR

12 INTENT. I DON'T THINK IT WAS THEIR EFFECT.
13 Q. BY MR. PIUZE: I'M ASKING ABOUT THEIR
14 MOTIVATION. WHY DO YOU THINK THEY DID THAT?
15 A. WELL, YOU KNOW, I THINK I'VE GOTTEN AS CLOSE
16 TO IT AS I CAN, NOT KNOWING THOSE PEOPLE, NOT KNOWING THEIR
17 DOCUMENTS. IT SEEMS TO ME THAT'S WHAT'S ON THE SURFACE OF
18 IT. YOU'VE READ IT AND YOU'VE SAID THAT THIS WAS A MAJOR
19 INDUSTRY. THEY WERE UNDER ATTACK, AND THEY SOUGHT TO
20 CREATE DOUBT ABOUT THE PRODUCT FOR THE REASONS THAT IT
21 WOULD HARM THEIR INDUSTRY.
22 BUT I THINK I'VE SAID THAT, AND I HONESTLY
23 DON'T KNOW IF I CAN GO ANY FARTHER THAN THAT BASED ON MY
24 KNOWLEDGE.
25 Q. THAT'S OKAY. SO HISTORICALLY SPEAKING, HAVE
26 YOU EVER HEARD THE NUMBER 400,000 MENTIONED IN REGARD TO
27 ANY HEALTH ISSUES REGARDING TOBACCO?
28 A. YES, I HAVE.

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1 Q. IN WHAT CONTEXT?
2 A. WELL, I SAW IT ON A BILLBOARD.
3 Q. WHAT DID IT SAY?
4 A. ACTUALLY, I THINK THE NUMBER THEY USED ON THE
5 BILLBOARD WAS 500,000. I WAS JUST DRIVING DOWN THE
6 FREEWAY: 500,000 PEOPLE HAVE DIED FROM SMOKING TOBACCO,
7 SOMETHING LIKE THAT.
8 Q. WHEN?
9 A. MY DAUGHTER WAS IN GYMNASTICS. THIS IS ABOUT
10 THREE YEARS AGO. I'M GOING TO GUESS IT WAS MAYBE 1998.
11 Q. BAD QUESTION. 500,000 PEOPLE DIED, WHEN?
12 EVER? IN A DAY? IN A YEAR? WHEN?
13 A. NO, THEY WERE SAYING ANNUALLY.
14 Q. LET ME GO WITH 400,000. THAT'S THE EVIDENCE
15 WE'VE HEARD HERE IN THE COURTROOM, OKAY?
16 A. OKAY.
17 Q. IF 400,000 PEOPLE DIED EVERY YEAR -- THAT'S
18 ROUND NUMBERS -- I'M NOT SAYING IT'S THE SAME EVERY YEAR.
19 I'M NOT SAYING IT'S A FLAT NUMBER THAT NEVER CHANGED.
20 BUT IF 400,000 PEOPLE DIED EVERY SINGLE YEAR
21 IN THIS COUNTRY FROM CIGARETTE-RELATED DISEASES, YOU'RE
22 TELLING US FROM YOUR RESEARCH IT WAS A DONE DEAL IN 1964,
23 WE'RE TALKING -- IF THAT'S RIGHT, 1964 -- WE'RE TALKING
24 SOMETHING LIKE 13, 15 MILLION PEOPLE DIED DURING THAT
25 PERIOD.
26 AND AFTER DOING THE MATH, HERE'S MY QUESTION:
27 WHILE THEY WERE GUARDING THEIR MONEY-MAKING MACHINE,
28 HISTORICALLY SPEAKING, WHAT HAPPENED TO THEIR CUSTOMERS?

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1 MR. LEITER: OBJECTION, THIS IS ARGUMENT.
2 THE COURT: OVERRULED.
3 THE WITNESS: THEIR CUSTOMERS WERE QUITTING. THE
4 MAJORITY OF THEM QUIT. NOT EVERYBODY DID IN THE SAME WAY
5 THAT PEOPLE KNOW THAT DRINKING IS BAD FOR THEM, THAT THEY
6 SHOULD NOT DRINK AND DRIVE, THAT DRIVING YOUR CAR TOO FAST
7 IS BAD FOR YOU AND PEOPLE TAKE THOSE RISKS AND THEY ARE NOT
8 GOOD RISKS TO TAKE.
9 Q. BY MR. PIUZE: HISTORICALLY SPEAKING THAT'S
10 YOUR ANSWER?
11 A. WELL, YES. YES, PEOPLE TOOK RISKS AND PEOPLE
12 DIED FROM TAKING RISKS.
13 Q. HOW ABOUT THIS FOR PART OF THE ANSWER:
14 400,000 PEOPLE A YEAR STOPPED WHEN THEY GOT NAILED INTO A
15 COFFIN?
16 MR. LEITER: OBJECTION. IT'S ARGUMENT.

17 THE COURT: SUSTAINED.
18 Q. BY MR. PIUZE: IT IS TRUE THAT THE TOBACCO
19 INDUSTRY LOST 13 TO 15 MILLION CUSTOMERS IN THAT PERIOD
20 JUST BECAUSE THEY ALL DIED?
21 MR. LEITER: OBJECTION, MISSTATES THE EVIDENCE.
22 THE COURT: OVERRULED.
23 DO YOU KNOW THAT?
24 THE WITNESS: I UNDERSTAND THAT THAT 50 MILLION HAD
25 QUIT, IS THAT WHAT YOU'RE LOOKING FOR? IN WHICH PERIOD OF
26 TIME? I GUESS I'M NOT QUITE UNDERSTANDING WHAT THAT
27 QUESTION IS.
28 Q. BY MR. PIUZE: I DIDN'T USE "QUIT." YOU KNOW
3954
1 I'M NOT ASKING "QUIT."
2 I'M ASKING HOW MANY DO YOU THINK DIED DURING
3 THE PERIOD 1964 TO THE PRESENT WHILE PHILIP MORRIS AND ITS
4 COHORTS WERE GUARDING THEIR MONEY-MAKING MACHINE?
5 MR. LEITER: OBJECTION, ARGUMENTATIVE.
6 THE COURT: OVERRULED.
7 THE WITNESS: WELL, YOU'VE GIVEN ME THE FIGURE -- A
8 NUMBER THAT I THINK -- I DON'T KNOW IF IT'S ACCURATE OR
9 NOT, AND PERHAPS IT IS.
10 AND THEN THAT'S -- THE ANSWER TO THE QUESTION
11 IS THE ANSWER YOU JUST GAVE ME; RIGHT? ISN'T THAT WHAT
12 YOU'RE LOOKING FOR?
13 Q. BY MR. PIUZE: YOUR NUMBER WAS BIGGER THAN
14 MINE. IT WAS A HALF A MILLION A YEAR.
15 AND I'M GOING WITH THE TESTIMONY WE HEARD
16 HERE, 400,000 A YEAR.
17 A. RIGHT. AND THOSE WERE TOBACCO RELATED, AND I
18 JUST -- I'M NOT A DOCTOR, SO I CAN'T TESTIFY TO, NO, OKAY,
19 WHICH PEOPLE DIED FROM HEART DISEASE AND WHICH PEOPLE DIED
20 FROM THIS AND FROM THAT. I JUST DON'T REALLY KNOW THOSE
21 FIGURES. THEY WERE NOT A PART OF MY QUESTION.
22 Q. I'M NOT ASKING THAT.
23 MR. PIUZE: HERE'S WHERE I'LL FINISH UP, YOUR HONOR.
24 I'LL FINISH RIGHT ABOUT HERE.
25 Q. YOU TALKED TO THE JURY SOMEWHAT ABOUT THE
26 CONSUMER MOVEMENT IN THE '60S; RIGHT?
27 A. YES, I DID.
28 Q. DO YOU THINK, TAKING A LITTLE RETROSPECTIVE
3955
1 LOOK HERE, THAT THE ABSOLUTE LAST ORGANIZATION ON THE
2 CONSUMER BANDWAGON, OUT OF THE ENTIRE SPECTRUM OF OUR
3 SOCIETY, WAS THE DEFENDANT IN THIS LAWSUIT, PHILIP MORRIS?
4 A. YOU KNOW, I DON'T KNOW THE ANSWER TO THAT.
5 THERE ARE A LOT OF COMPANIES.
6 YOU SAID THE CONSUMER BANDWAGON. YOU KNOW,
7 ARE THERE OTHER COMPANIES WHICH, YOU KNOW, HAVE ISSUES WITH
8 THEIR PRODUCTS AND THEY HAVEN'T SAID, YES, THERE ARE
9 PROBLEMS WITH THIS PRODUCT?
10 I JUST HEARD SOMETHING ABOUT HIGH CHAIRS THE
11 OTHER DAY, THAT ONE COMPANY IS BEING BROUGHT UP ON THEIR
12 HIGH CHAIR RECALLS. I THINK IT'S SORT OF A RHETORICAL
13 QUESTION.
14 Q. 13-AND-A-HALF MILLION KIDS GOT KILLED IN HIGH
15 CHAIRS.
16 A. I DON'T KNOW THE NUMBERS.
17 THE COURT: ALL RIGHT. THAT'S ENOUGH FOR THE DAY.
18 ALL RIGHT, LADIES AND GENTLEMEN, WE'LL SEE YOU
19 ON MONDAY AFTERNOON AT 1:30. DON'T DISCUSS THE CASE WITH
20 ANYONE.
21

22 (AT 4:05 P.M., AN EVENING ADJOURNMENT
23 WAS TAKEN UNTIL FRIDAY, APRIL 27, 2001
24 AT 1:30 P.M.)

25
26
27
28

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NO. 308 HON. CHARLES W. MC COY, JR., JUDGE

4
5

RICHARD BOEKEN,)

6)

PLAINTIFF,)

7)

VS.) CASE NO.

8) BC226593

PHILIP MORRIS,)

9)

DEFENDANT.)

10 _____)

11

REPORTER'S CERTIFICATE

12

13 STATE OF CALIFORNIA)

) SS.

14 COUNTY OF LOS ANGELES)

15

16 I, CARMEN J. GARROD, CSR NO. 4009, OFFICIAL COURT
17 REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
18 FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
19 FOREGOING PAGES COMPRISE A FULL, TRUE AND CORRECT
20 TRANSCRIPTION OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED
21 MATTER ON APRIL 26, 2001.

22

23 DATED THIS 26TH DAY OF APRIL 2001.

24

25

26

_____) CSR NO. 4009

27

OFFICIAL COURT REPORTER

28